

American Immigration Lawyers Association

Senate Preserves Path to Citizenship for Guest Workers, Restores Ability to Self-Petition

Today's session began with Senator Kennedy (D-MA) offering a competing amendment (no. 4066) to the Cornyn/Kyl amendment (no. 3965) that the Senate approved yesterday afternoon by a narrow vote of 50-48. The Cornyn/Kyl amendment essentially would have gutted the provisions of the bill that allow H-2C visa holders to self-petition for permanent residence, allowing for such self-petitions only if an employer attests that the employer will employ the worker in the offered job position, and the Secretary of Labor certifies that there are not sufficient U.S. workers who are able, willing, qualified, and available to fill the position.

Senator Kennedy's alternative would allow an H-2C worker with the requisite 4 years in H-2C status (this time requirement was included in the original legislation) to self-petition for permanent residence if the worker successfully petitions the Labor Department for a certification that there are insufficient U.S. workers willing and available to fill the job, and submits at least 2 documents from the following list to establish current employment: (1) records maintained by the SSA; (2) records maintained by the alien's employer; (3) records maintained by the IRS; or (4) records maintained by any other government agency.

Senators **approved** the Kennedy amendment 56-43.

Lawmakers next took up an amendment by Senator Ensign (R-NV) (no. 3985) that would amend both the Social Security Act and the underlying immigration bill to bar individuals who have legalized from consolidating their social security earnings and obtaining social security credits for income earned prior to the time that the alien was assigned a valid social security number.

A **Motion to Table** the Ensign amendment was **approved** on a 50-49 vote, effectively killing the proposal.

Next up was an amendment offered by Senator Akaka (D-HI) (no. 4029) that would exempt from the numerical limitations on family-based immigrants the unmarried and married sons and daughters of naturalized Filipino World War II veterans.

Senators **approved** the Akaka amendment on a voice vote.

Senator Vitter offered an amendment (no. 3964) that would: (1) strike the provisions in section 601 of the bill that allow applicants for earned adjustment to submit sworn declarations as proof of employment history; (2) require sworn affidavits from non-relatives to include detailed contact and other verification information (for both earned adjustment and DMD applicants); (3) strike the "Intent of Congress" language that the documentation requirements "be interpreted in a manner that recognizes and takes into account the difficulties encountered by aliens in obtaining evidence of employment due to the undocumented status of the alien"; and (4) "clarify" that the alien has the burden of proving his or her employment history by a preponderance of the evidence.

Senators **approved** the Vitter amendment on a voice vote, thereby cutting off a potential second-degree amendment by Senator Kyl that, among other things, would have eliminated judicial and administrative review for earned adjustment applicants. The Kyl amendment could nonetheless resurface at a later point in time.

Senators then took up an amendment by Senator Inhofe (R-OK) (no. 4064) that would impact many fundamental services provided in multiple languages by making English the national language of the United States. In addition, it would provide that, unless specifically stated in law, no person has a right, entitlement or claim to have the U.S. government or its representatives communicate, or provide services or materials, in any language other than English. Finally, the amendment would set forth requirements for the redesign of the citizenship test, including a requirement that prospective citizens pass an English proficiency test, and would require that any changes to the testing process be implemented by January 1, 2008.

Senator Salazar (D-CO) offered a competing amendment (no. 4073) that would declare English as the “common and unifying language of the United States,” and would require the U.S. government to preserve its role as such. The amendment also specifies that, “Nothing herein shall diminish or expand any existing rights under the law of the United States relative to services or materials provided by the government of the United States in any language other than English.”

There were several hours of impassioned debate on the Inhofe and Salazar amendments, with several Senators arguing that the former would create barriers to due process, democratic participation, and education for non-English speaking and limited-English proficient U.S. citizens, and would ultimately do more to exclude people from civic participation than it would to encourage integration into American society.

Senators nonetheless **approved** the Inhofe amendment on a 63-33 vote, and subsequently **approved** the Salazar amendment, as well, on a 58-39 vote.

Next up was Senator Clinton (D-NY), with an amendment (no. 4072) that would redirect funds from certain fees listed in the underlying bill, directing 25% of funds to the State Criminal Alien Assistance Program and 75% of funds to state governments, some of which must be provided to local governments for education and health care services that are provided to undocumented immigrants.

Senator Cornyn (R-TX) offered a competing amendment (no. 4038) that would impose an additional application fee on immigrants to begin the process of legalization. It would create a fund that would collect those fees and use the money to help states pay for health and educational services for noncitizens.

The Clinton amendment was **rejected** by a vote of 43-52, while the Cornyn amendment was **adopted** on a vote of 64-32.

In one of the day’s tenses moments, Senator Cornyn offered an amendment on behalf of Senator Kyl (R-AZ) (no. 3969) that would preclude participants in the bill’s temporary worker program

from being placed on a pathway to citizenship. Under the bill as drafted, temporary workers can be sponsored for permanent residence by their employers or, after 4 years of work, can self-petition for permanent status.

Senator McCain offered a **Motion to Table** the Kyl amendment, which was **agreed** to on a 58-35 vote, effectively killing the measure.

Several additional amendments were laid down during the final hour of the session, one of which passed on a voice vote, with recorded votes on the remainder expected to begin at 5:30 p.m. on Monday, May 22. These final amendments included:

No. 3998, offered by Senator Nelson (D-FL), that would require the construction of additional detention facilities for undocumented immigrants. This amendment was **approved** on a voice vote.

No. 4076, offered by Senator Ensign (R-NV), that would provide support to the U.S. Border Patrol by authorizing the National Guard to provide, as part of their training, ground and air reconnaissance, logistical support, language translation services, administrative support, technical training services, emergency medical services, communication services, rescue of aliens in distress, and assistance in construction of patrol roads and fences and barriers along the southern U.S. border.

No. 4009, offered by Senator Chambliss (R-GA), that would amend the H-2A program to require employers of agricultural workers to pay the prevailing wage rate, thus doing away with the adverse effect wage rate.

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