



## **Immigration in the National Interest Act (September 2017) Section-by-Section**

### **Sec. 1: Short Title**

- Immigration in the National Interest Act of 2017.

### **DIVERSITY VISA PROGRAM**

#### **Sec. 2: Elimination of Diversity Visa Program**

- Strikes INA §203(c) [**Diversity immigrants**] and makes technical and conforming amendments.
- Effective Date = the first day of the first fiscal year beginning on or after the date of enactment of this Act.

### **REFUGEES**

#### **Sec. 3: Annual Admission of Refugees**

- Strikes INA §207(a) [**Maximum number of admissions; increases for humanitarian concerns; allocations**].
- Strikes INA §207(b) [**Determinations by President respecting number of admissions for humanitarian concerns**].
- Adds new INA §207(b), which caps the number of refugees who may be admitted in any fiscal year to 50,000 and requiring the President to “annually enumerate the number of aliens who were granted asylum in the previous fiscal year.”

### **FAMILY-BASED IMMIGRATION**

#### **Sec. 4: Family-Sponsored Immigration Priorities**

##### **CHANGES TO THE DEFINITIONS OF “CHILD” AND “IMMEDIATE RELATIVE”**

- Changes the definition of “**Child**” at INA §101(b)(1) from an unmarried person “under age 21” to an unmarried person “under age 18.”
- Changes the definition of “**Immediate Relative**” at INA §201(b)(2)(A)(i) to include only children and spouses of U.S. citizens (removes parents of adult U.S. citizens).

## CHANGES TO THE FAMILY-BASED IMMIGRATION SYSTEM

- **Worldwide Limitations**

- Creates new INA §201(c) [**Worldwide level of family-sponsored immigrants**] to cap family-based admissions to **88,000** per fiscal year, less the number of individuals paroled into the U.S. under INA §212(d)(5) in the second preceding FY who (1) did not depart the U.S. (without advance parole) within 365 days and (2) did not become an LPR during the preceding two FYs or who became an LPR under a provision that exempts adjustment of status under the normal annual numerical limitations.

- **Family-Based Preference System**

- Amends INA §203(a) [**preference allocation for family-based immigrants**] to recognize only spouses and minor children of LPRs as eligible for family-based sponsorship, outside of immediate relatives.
- **Eliminates the following categories:** unmarried sons and daughters of USCs (FB-1); unmarried sons and daughters of LPRs (FB-2B); married sons and daughters of USCs (FB-3); and brothers and sisters of USCs (FB-4).

- **Nonimmigrant Classification for Parents of Adult USCs**

- Creates a new nonimmigrant category (W) at INA §101(a)(15)(W) for parents of U.S. citizen children who are at least 21 years of age.
- Creates new INA §214(s) to:
  - Provide a 5 year initial period of authorization, with the option of extending nonimmigrant status for additional 5 year periods.
  - Prohibit employment authorization for W nonimmigrants, and prohibit them from accepting any federal, state, or local public benefits.
  - Requires the USC son or daughter to be responsible for the financial support for their parent(s), regardless of the parent(s) personal resources.
  - Must also provide “satisfactory proof” that the USC son or daughter has arranged for health insurance coverage “at no cost to the alien” during their time in the United States.

- **Effective Date** = The first day of the first FY that begins after the date of enactment of this Act.

- **Invalidity of Certain Petitions and Applications**

- Invalidates any petition seeking classification under a family-based category that is eliminated by this Act, that was filed on or after the date of enactment of this Act. Any application for an immigrant visa based on such a petition is also deemed invalid.

- However, any individual whose employment- or family-based immigrant petition or application under INA §203(a) or (b), as in effect on the day before enactment of this Act, was approved and who is scheduled to receive an immigrant visa in the applicable preference category no later than 1 year after the date of enactment of this Act, is entitled to the visa if he or she enters the U.S. within 1 year of the date of enactment of this Act.

## POINTS-BASED IMMIGRATION

### Sec. 5: Replacement of Employment-Based Immigration Categories with Immigration Points System

- Amends INA §201(d) to cap the number of points-based immigrants to **140,000** (including spouses and children); or **70,000** during the first 6 months of the FY.
- **Amends INA §203(b): Application Process for Points-Based Immigrant Visas**
  - Points-Based applications are to be submitted online “for placement in the eligible applicant pool.”
  - Applications must include:
    - The identification of the points for which the applicant is eligible;
    - Attestation that the applicant has sufficient documentation to verify the points claimed;
    - A fee of \$160; and
    - Any other information required by USCIS regulation.
  - Each application that meets the points requirement and for which an attestation of a job offer from a prospective employer has been received shall be placed in an eligible applicant pool, which shall be sorted by **total points**.
  - Applicants with equal points will be prioritized according to **educational attainment** as follows, with applicants with U.S. degrees ranked higher than those with foreign degrees:
    - Doctorate degree
    - Professional degree
    - Master’s degree
    - Bachelor’s degree
    - High school diploma
    - No high school diploma
  - Applicants with equal points and equal educational attainment shall be ranked according to their **English language proficiency test scores**.
  - Applicants with equal points, equal educational attainment, and equal English test scores will be ranked according to **age**, with applicants nearest their 25th birthdays ranked higher.
  - Applicants stay in the Eligible Applicant Pool for 12 months. If they are not invited to apply for a visa in the 12 month period, they can reapply.

- **Visa Petition**

- Every 6 months, USCIS shall invite the highest ranked applicants to file a petition for a points-based IV. USCIS shall invite enough people to yield 50% of the points-based IVs authorized for the fiscal year.
- USCIS “shall” award a points-based IV to any applicant who filed a petition within 90 days of the invitation that includes:
  - Documentation in support of the points claimed;
  - If applicable, an attestation from a prospective employer confirming the salary offered and that the applicant is not displacing a U.S. worker;
  - Proof of health insurance from a U.S. employer or evidence that a bond has been posted to purchase health insurance; and
  - A fee of \$345.
- If a petition that meets these requirements is received after the numerical limitation has been reached, the USCIS Director shall issue a points-based IV to the petitioner, delay admission of the individual and his/her dependents until the first day of the next FY, and reduce the number of points-based IVs that may be issued in that FY accordingly.

- **Visas for Spouses and Children**

- Provides for the issuance of a points-based IV to the legal spouse of an applicant upon approval of the visa petition for the principal.
- Provides for the issuance of a points-based IV to the minor children of an applicant upon approval of the visa petition for the principal, as long as the children were under age 18 at the time the petition is filed.
- Adult children of applicants who are unable to care for themselves may be admitted to the U.S. on a temporary basis but are not authorized to work and cannot receive any other benefits of LPR status.

- **Inflation Adjustments**

- Fees in this section shall be adjusted every 2 years for inflation.

- **Ineligibility for Public Benefits**

- A person granted a points-based IV, and all persons in his or her household, are ineligible for any Federal means-tested public benefit [defined at 8 USC §1613] for 5 years from the date the visa was issued.

### **Creates new INA §220, “Immigration Points System”**

- **Points.** An applicant may submit an application for placement in the eligible applicant pool if he or she has accrued **20 points**. Points are allocated as follows:
  - **Education:** Education points may be accrued only for the highest degree obtained as of the date the application for placement in the Eligible Applicant Pool is

submitted. USCIS and DOE must maintain and regularly update a list of foreign educational institutions and degrees that meet accreditation standards equivalent to those recognized by major U.S. accrediting agencies and are approved for purposes of accruing points.

- U.S. or Foreign High School Degree: **1 point**
- Foreign Bachelor’s Degree: **5 points**
- U.S. Bachelor’s Degree: **6 points**
- Foreign STEM Master’s Degree: **8 points**
- U.S. STEM Master’s Degree: **10 points**
- Foreign Professional Degree or Doctoral STEM: **12 points**
- U.S. Professional Degree or Doctoral STEM: **15 points**

For purposes of this paragraph, a doctorate degree in STEM must be a degree from an institution that is described in §101(a) of the Higher Education Act or is a proprietary institution of higher education as defined by such act; classified by the Carnegie Foundation for the Advancement of Teaching on January 1, 2013 as a doctorate-granting university with a very high or high level of research activity or classified by the NSF after enactment of this Act as having equivalent research activity to those institutions classified by the Carnegie Foundation as having very high or high level of research activity; has been in existence for at least 10 years; and is accredited by an accrediting body that is accredited by the DOE or by the CHEA.

- **Job Offer:** Points for “highly compensated employment” may be accrued as follows:
  - Annual salary offered is 150% but less than 200% of the median household income in the state of employment = **5 points**.
  - Annual salary offered is 200% but less than 300% of the median household income in the state of employment = **8 points**.
  - Annual salary offered is at least 300% of the median household income in the state of employment = **13 points**.

However, an applicant **may not be placed in the eligible applicant pool** if he or she has a bachelor’s degree or less, and does not accrue any points for “highly compensated employment.”

- **Valid Offer of Admission Under Family Preference Category:** An alien with an immigrant visa petition that was granted under INA §203(a) as in effect on the day before enactment of the Immigration in the National Interest Act is entitled to **2 points** if: (1) he or she was scheduled to receive an IV but did not receive an IV during the 1 year period from the date of enactment.
- **English Language Proficiency:** Points for English language proficiency are accrued based on the highest test ranking of the applicant as of the date the application for placement in the Eligible Applicant Pool is submitted.

- 1st – 5th Deciles: **0 points**
  - 6th and 7th Deciles: **6 points**
  - 8th Decile: **8 points**
  - 9th Decile: **9 points**
  - 10th Decile: **10 points**
- **Age:** Age is determined as of the date on which the application for placement in the eligible applicant pool is submitted.
- 0 – 17: **May not submit an application**
  - 18 – 21: **6 points**
  - 22 – 25: **8 points**
  - 26 – 30: **10 points**
  - 31 – 35: **8 points**
  - 36 – 40: **6 points**
  - 41 – 45: **4 points**
  - 46 – 50: **2 points**
  - 51+: **0 points**

- **Definitions**

- **Degree in STEM:** a degree in a field of science, technology, engineering, or mathematics from a U.S. institution of higher education, or have successfully completed a dental or medical residency program, a medical degree, a dentistry degree, or an osteopathic medicine/osteopathy degree
- **Field of Science, Technology, Engineering or Mathematics:** a field included in the DOE’s classification of instructional programs taxonomy within the summary groups of computer and information sciences and support services, engineering, biological and biomedical sciences, mathematics and statistics, physical sciences, and the series geography and cartography, advanced / graduate dentistry and oral sciences and nursing.
- **High School:** Defined by 20 USC §7801.
- **Institution of Higher Education:** Defined by 20 USC §1001.
- **IELTS:** International English Language Testing System.
- **TOEFL:** Test of English as a Foreign Language.
- **English Language Proficiency Test Ranking:** The decile rank of the applicants test score as compared to all other people who took the same test in the same period. USCIS (in consultation with the DOE) may adjust the decile rank of an applicant’s test score if the number of people taking the test is too small or skewed such that the decile rank is inconsistent with decile rank the applicant would have received if he or she had taken the IELTS or TOEFL.
- **English Language Proficiency Test:** The International English Language Testing System (IELTS); the Test of English as a Foreign Language (TOEFL); or any other English proficiency test approved by USCIS that meets standards set by IELTS or TOEFL.

- **Annual Report:** One year after the date of enactment and every year thereafter, the DHS Secretary shall submit a report to Congress that includes for the previous FY:
  - The number of points-based IVs issued; and
  - With respect to aliens placed in the eligible applicant pool and aliens invited to submit a points-based IV petition:
    - The percentage of applicants seeking residence in each state;
    - The percentage of applicants in each of the educational attainment categories; and
    - The initial U.S. employer of such applicants and the average starting salary offered by U.S. employers.
  
- **Quadrennial Report:** No more than 4 years after the date of enactment, and every 4 years thereafter, DHS, in consultation with DOL, Commerce, and DOS shall submit a report to the Senate and House Judiciary Committees and Foreign Relations/Foreign Affairs Committees that includes any recommended revisions to the points-based system. Recommendations shall be designed to achieve increasing per capita GDP growth, enhancing economic success of points-based immigrants, improving the fiscal health of the U.S. and protecting/increasing wages for U.S. workers.
  
- **Public Information:** DHS shall make available to the public on the DHS website and shall update monthly, the following information, with respect to aliens granted status under §201(b) of the INA:
  - The name, city and State of each employer of such alien who was granted status in the month and fiscal year to date.
  - The number of aliens so granted status in the month and fiscal year to date based upon an attestation that a job offer has been made by that employer.
  - The occupation for which such alien(s) were sought by such employer and the job title listed by such employer.

## EMPLOYMENT CREATION VISAS

### Sec. 6: Employment Creation Visas

#### Creates new INA §221, “Employment Creation Visas”

- **Employment Creation Visas:** Makes 9,940 visas available each fiscal year to immigrants seeking to enter the United States for purposes of engaging in a new commercial enterprise (including a limited partnership). To qualify, an alien must:
  - (1) have invested (after November 29, 1990) or, is actively in the process of investing, capital in an amount not less than \$1 million dollars (except as otherwise provided); and
  - (2) will benefit the U.S. economy and create full-time employment for at least 10 U.S. citizens or LPRs or other immigrants lawful authorized to be employed in the U.S. (other than the immigrant and the immigrant’s spouse/children).

- **Sets-aside for Targeted Employment Areas:**
  - At least 3,000 of the visas made available shall be reserved for immigrants who invest in a new commercial enterprise which will create employment in a targeted employment area.
  - **Targeted Employment Area:** Defined as a rural area or an area which has experienced high unemployment (of at least 150 percent of the national average rate) at the time of investment.
  - **Rural Area:** Defined as any area other than an area within a metropolitan statistical area or within the outer boundary of any city or town having a population of 20,000 or more (based on the most recent decennial census of the U.S.).
  
- **Amount of Capital Required:** Except as otherwise provided, the amount of capital required to be eligible for an employment creation visa shall be \$1,000,000. The AG, in consultation with the Secretary of Labor and State may from time to time prescribe regulations increasing this dollar amount.
  - **Adjustment for targeted employment areas:** The AG may, in the case of an investment made in a targeted employment area, specify an amount of capital required that is less than \$1,000,000, but not less than ½ that amount.
  - **Adjustment for high employment areas:** In the case of an investment made in a part of a metropolitan statistical area that at the time of investment is (a) not a targeted employment area and (b) is an area with an unemployment rate significantly below the national average, the AG may specify an amount of capital greater than \$1,000,000, but not greater than 3 times that amount.
  
- **Full time employment:** Full-time employment means employment in a position that requires at least 35 hours of service per week
  
- **Not Subject to Direct Numerical Limitation:** Aliens admitted under the employment creation visa are not subject to the direct numerical limitations set forth in INA §201(b) [**aliens not subject to direct numerical limitations**].
  
- **Conditional Permanent Residence:** Amends INA §216A [**conditional permanent resident status for certain alien entrepreneurs, spouses and children**] by striking §203(b)(5) each place it appears and inserting new section §221 [**employment creation visas**].

## NATURALIZATION

### Sec. 7: Prerequisite for Naturalization

- Amends INA §318 to prohibit naturalization of an individual if the person who submitted an affidavit of support on his or her behalf failed to reimburse the federal government for all means-tested public benefits received by the individual during the 5 year period immediately after the individual became an LPR.