

ANALYSIS OF DRAFT WHITE HOUSE BILL

Title II: Legalization

FEBRUARY 20, 2013

NEW IMMIGRATION STATUS

- The White House's draft immigration reform bill would create a new immigration status called "lawful prospective immigrant" (LPI). LPIs would be able to work lawfully, travel, and sponsor children and spouses.
 - This is an improvement over the Z nonimmigrant (temporary) visa proposal in the 2007 immigration reform legislation that was never enacted. The bill states that an individual in LPI status will be considered "lawfully admitted."

ELIGIBILITY

In order to be eligible for LPI, a person must be unauthorized, have been physically present in the U.S. since before the introduction of the immigration reform bill (which in the draft that was leaked to the news media is called the Comprehensive Immigration Reform Act of 2013), and have maintained continuous presence up until the date of application.

- **Time limit to file.** There will be a time-limited period to file an application for LPI status, which will be established by the secretary of the U.S. Department of Homeland Security (DHS).
- **Ability to petition for family members.** A person with LPI status will be able to file a petition to obtain LPI status for children and spouses who are outside of the U.S. or in the U.S. with lawful status.
- **Individuals in custody or removal proceedings.** Individuals who are apprehended before the application period, are in removal proceedings, or have been ordered removed will be able to apply for legalization after establishing prima facie eligibility for LPI status.
 - The 2007 bill did not include this provision. This is very important, as DHS will continue to place hundreds of thousands of people in removal proceedings as this bill is being finalized and immigration reform debated.

FILING FOR STATUS

- **Language assistance.** The application will be available in the most common languages spoken in the U.S.
- **Security and background checks.** The applicant must submit biographic and biometric data as specified by DHS.

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- **Fees.** Applicants over the age of 14 will be required to pay a fee that will cover the full cost of processing the application. DHS will have the sole authority to set a maximum fee per family and can determine what criteria must be met to receive a fee exemption.
 - Because the amount of the fee is unknown at this time, this may prove to be a barrier for low-income immigrants.
- **Penalties.** Applicants who are 21 years old or older must pay a penalty of \$250 when filing for the first extension of LPI status.
- **Interview.** DHS has the discretion to interview applicants.
- **Denial of application.** If an application is denied and the filing period is still open, the applicant can file a new application if she can demonstrate changed circumstances or new evidence.
- **Period of authorization.** LPI status will be valid for 4 years from the date of the initial grant of the application. After 4 years, LPIs must file an application to extend the visa and demonstrate continuing eligibility.
- **DACA recipients.** DHS can establish streamlined procedures for Deferred Action for Childhood Arrivals (DACA) recipients who have already met legalization eligibility criteria.
- **Pre-application registration.** DHS will have the discretion to permit applicants to register and receive work authorization while waiting to apply for LPI status.
 - This is important since it may take a significant amount of time for DHS to promulgate regulations and establish the full application procedure.

ONCE APPROVED

- **Documentation and SSN.** Approved LPIs will receive a tamper-resistant ID that will serve as evidence of work authorization and as a valid travel and entry document. LPIs will also receive a Social Security number.
 - This clarifies that individuals in LPI status will be able to travel outside the U.S.
- **Public benefits.** LPIs will not be eligible for federal public benefits during their provisional status unless they meet requirements under existing law. After completing the provisional period and if granted lawful permanent residence (LPR or “green card”) status, individuals remain ineligible for Medicaid, the Supplemental Nutrition Assistance Program (SNAP, formerly known as food stamps), and Medicare for another 5 years under existing law. As a result, individuals granted LPI status will be ineligible for federal public benefits for at least 11 years. Children granted LPI status will be ineligible for nutrition assistance for at least 6 years.
- **Health care.** LPIs will not be eligible for Medicaid, the Children’s Health Insurance Program (CHIP), or the premium tax credits and cost-sharing reductions under the Affordable Care Act (ACA), which help make purchasing private health insurance more affordable. Yet as lawfully present individuals, LPIs will be subject to the individual

mandate under the ACA. Without access to the ACA's affordable tax credits, LPIs will remain uninsured and may be subject to a tax penalty.

WHO WILL NOT BE ELIGIBLE

Like the 2007 bill, the current draft White House bill has two separate hoops that people have to jump through to demonstrate eligibility. The first is not being subject to the "grounds of ineligibility," which is a new category created for legalization. The second is showing that they are not "inadmissible," a requirement that currently applies to noncitizens seeking to lawfully "enter" the U.S. Grounds of inadmissibility are detailed in section 212 of the Immigration and Nationality Act (INA). However, the 2013 draft White House bill provides that some of these grounds would not apply to legalization.

Grounds of Ineligibility

- **Served one year in prison.** A person who has been convicted of any federal or state crime for which the person served more than 1 year in prison will be ineligible. There is an exception for state and local offenses where an essential element of the crime was immigration status or a violation of the INA or a violation of INA regulations.
 - This is a marked improvement over the 2007 bill because of its "time served" aspect. The immigration status exception is very helpful to address state crimes specifically targeting undocumented immigrants, such as those created by states like Alabama and Arizona. However, it does not address the issue for those who are convicted of a section 1326 (felony reentry) offense, which is a federal offense (currently, this is the most frequently charged immigration-related offense in federal courts).
- **Three separate offenses where aggregate time served was 90 days.** A person will be ineligible if s/he has been convicted of three offenses on different dates where the total time served was 90 days or more. There is an exception for state and local offenses where an essential element of the crime was immigration status or a violation of the INA or a violation of INA regulations.
 - This is similar to the 3 misdemeanors ground of ineligibility in the 2007 bill. However, that bill did not have the limiting aspect of "time served of 90 days" and it also did not specify that the convictions had to be on different dates. It is likely that the immigration status-related offense exception will be very helpful with regard to lower-level offenses such as driving without a license
 - These provisions could narrow the road to citizenship for countless immigrants, including those convicted of offenses such as marijuana possession or minor shoplifting offenses.
- **Offense under foreign law.** If a person commits an offense outside the U.S. that would make him/her inadmissible or removable if it was committed in the U.S., then s/he is ineligible. There is an exception for purely political offenses and for sections of inadmissibility that will not apply in legalization.

- This is better than the 2007 bill because it requires a conviction rather than “a reason to believe” and creates an exception for political offenses.
- **Aggravated felony.** Anyone who is convicted of an aggravated felony at any point after entry to the U.S. will be ineligible.
 - Unless the definition of “aggravated felony” is significantly narrowed, this ineligibility ground will undermine the improvements made to the first ground requiring time served of more than a year. Aggravated felonies are an extremely broad category of crime that includes most drug-related offenses, including possession of any amount of marijuana in excess of 30 grams. Despite the name, the crime does not have to be a felony, and there don’t have to be any aggravating factors.

Grounds of Inadmissibility

Some *previous restrictions* preventing people from adjusting their status to lawful residency *will not apply* to this legalization program. These include:

- Unlawful presence bars (also known as the “3- and 10-year bars”).
 - Removing the 3 and 10 year bars will be very helpful, as they apply to many people who have lived in the U.S. for a long time.

The following grounds of inadmissibility *will apply only to those people who seek to enter the U.S. unlawfully after the date that the Comprehensive Immigration Reform Act of 2013 is introduced* (so they will not apply to those who are physically present when the bill is introduced):

- Those who entered without being “admitted” or paroled.
- Those who misrepresented a material fact or fraud and false claim to citizenship.
- Stowaways.
- Individuals who are unlawfully present after a previous immigration violation (also known as the “permanent bar”). This affects people who have been unlawfully present in the U.S. for at least one year or were ordered removed and subsequently reentered or attempted to reenter unlawfully.
 - This is a NILC priority, and we agree with the White House that the permanent bar should not apply.

The following grounds of inadmissibility will apply to applicants *only if they occur after the filing of an application for LPI status*:

- Failure to attend a removal hearing.
- Subject to a final order of removal.
- Five-year bar for violating a student visa.
- Have been previously removed (including people who have been removed for an aggravated felony) and seek admission.
- Guardian of an inadmissible alien who is ill or has a disability or is an infant.

Waivers

- **Waivers of grounds of inadmissibility.** The bill permits waiver of many grounds of inadmissibility, and the waiver language is broader than previous waiver language because it allows a waiver “for humanitarian purposes, to ensure family unity, or if such waiver is otherwise in the public interest.”
- **No waivers for most criminal grounds of removal.** There will be no waivers for most of the criminal grounds of removal. These grounds are very broad and include crimes of moral turpitude, multiple criminal convictions, drug offenses, and controlled substance trafficking convictions. The only criminal grounds that may be waived are for prostitution and foreign government officials who have committed severe violations of religious freedom. All of the noncriminal grounds can be waived, except for the national security grounds, practicing polygamists, child abductors, and former citizens who renounced their citizenship to avoid taxation.
 - The lack of a waiver for the broad criminal grounds is extremely problematic, particularly the inability to waive old convictions or lower-level criminal offenses. All offenses should be eligible for a waiver, since it is difficult to anticipate the individual circumstances that would merit discretion.

ROAD TO CITIZENSHIP: TIMELINE AND REQUIREMENTS

- **Back of the line.** This provision allows LPIs to apply for green cards either 8 years after the act is passed or 30 days after current visa backlogs have cleared, whichever condition is satisfied earlier. However, applicants must wait at least 6 years after they receive LPI status before they can apply. Lawful permanent residency visas will not be subject to numerical limitations.
 - The addition of the 8-year waiting period is very important because it provides a date certain when individuals can adjust to LPR status.
 - However, this means that it will likely be at least 13 years (8 years in LPI status, followed by another 5 years in LPR status) before someone will be eligible to apply for citizenship.
- **Immigrant youth.** The bill allows certain younger immigrants to adjust to permanent residence more quickly. Applicants under 35 years of age who entered before the age of 16 and at the time of LPI status had enrolled in or graduated from a higher education institution or received a high school degree or GED can adjust to LPR status upon completing at least 2 years in a higher education institution or serving in the military for 2 years. Such people can include spouses and minor children in their application for a green card.
- **Fees and penalties.** Fees will be established that cover the full cost of processing the application. LPIs over the age of 21 must pay a \$500 penalty for adjusting to lawful permanent residence.

- **Eligibility.** The inadmissibility grounds (listed above) will apply to conduct after receiving LPI status.
- **Citizenship skills.** Applicants over the age of 14 must demonstrate that they are pursuing a course of study in English and civics or have met the current criteria for naturalization. There is an exception for those with disabilities. DHS may waive this requirement for those over 65 years of age.
- **Payment of taxes.** The applicant must show that s/he has satisfied any tax liability from the time they received LPI status as well as “any other assessed federal tax liability.”
- **Continuous physical presence.** The applicant may not have an absence from the U.S. longer than 6 months during LPI status.
- **Administrative and judicial review.** There will be a single level of administrative review for application, extension, or revocation of LPI status or denial of LPR status, and only one appeal may be filed. Individuals who lose at the administrative level can file an appeal in federal district court. Any challenge to the CIR law or implementing rules must be filed in the District Court for the District of Columbia within 2 years of the law’s enactment or within 2 years of issuance of regulations or other implementation policies.
 - This is unduly restrictive and is an effort to shield the agency’s implementation of the program from judicial oversight.
- **Confidentiality.** The information on applications will be kept confidential except if a law enforcement agency (including other components of DHS) requests it in writing in connection with a criminal investigation or prosecution or a gun background check. If DHS denies an application based on fraud, the agency can refer the applicant’s information to law enforcement authorities.
- **Employer protections.** Employers will not be subject to civil or criminal penalties for providing evidence of employment in support of an LPI application.
- **Fraud prevention program.** Each department, in processing applications, will develop an administrative program to prevent fraud, including training for personnel, auditing applications and identifying administrative practices that encourage fraud.
- **Grant program to assist eligible applicants.** Grants will be available to nonprofit organizations including community, faith-based, or other immigrant-serving organization whose staff is qualified and experienced in providing services to immigrants and refugees.