

Comprehensive Immigration Reform for America's Security and Prosperity (H.R. 4321) | Summary of Title IV, Subtitle A

SUBTITLE A: EARNED LEGALIZATION OF UNDOCUMENTED INDIVIDUALS

Subtitle A creates an abroad amnesty program for virtually all illegal aliens currently in the United States. It first grants illegal aliens “conditional nonimmigrant status” which initially lasts six years, but may be renewed in an unlimited number of 5-year increments. Unlike the amnesty bills of 2006 and 2007, there is no employment requirement; an alien may be looking for a job, or declare that he/she is an active community member, and still be eligible for the amnesty. No documentation is required, although the bill permits DHS to request evidence at the time of application. The bill then provides that after the first six years, a conditional nonimmigrant is eligible to apply for a green card (legal permanent resident (LPR) status).

The amnesty program established in this title weaves in provisions of the DREAM by creating various exceptions along the way for individuals who initially entered the U.S. before 16, have lived in the U.S. at least 5 years, and have not reached 35. This title also allows states to grant in-state tuition to illegal aliens without granting it to all U.S. citizens and nationals (repealing current law.)

Sec. 401(a). Conditional Nonimmigrants; In General

- Requires aliens described in this section to register with DHS
- Provides DHS *shall* classify an alien as a “conditional nonimmigrant” or a “conditional nonimmigrant dependent” if the alien (1) registers and (2) is determined to meet the following requirements:
 - Physical Presence (§401(c));
 - Otherwise Admissible to the U.S. (§401(d)); and
 - Contributions to the U.S. Through Employment, Education, Military Service, or other Community Service (§401(e)).

Sect. 401(b). Compliance with Security and Law enforcement Background Checks.

- Registration and classification as a conditional nonimmigrant are contingent upon an alien submitting all required biometric data.

Sec. 401(c). Physical presence

- To be eligible for conditional nonimmigrant or dependent status, an alien must be physically present in the U.S. on the date of introduction (December 15, 2009) (§401(c)(1)(A))

- The alien must be continuously present since the date of introduction (§401(c)(1)(B)). An unauthorized, continuous absence of more than 180 days between introduction and the application date will constitute a break in continuous presence. (§401)(c)(2))
- The alien was *not* be legally present in the U.S. on the date of introduction as a nonimmigrant “or has been in violation of status on or before such date.” (401(c)(1)(C)) [The drafting is confusing. It seems to suggest that visa-overstayers are eligible.]

Sec. 401(d). Otherwise Admissible to the U.S.

An alien shall be eligible for conditional nonimmigrant or dependent status if the alien:

- Is not inadmissible under INA §212(a) (the general list of disqualifications)
 - The following grounds of inadmissibility shall not apply:
 - Failure to have required labor certification (212(a)(5))
 - Illegal entry and violation of immigration laws (212(a)(6))
 - Failure to have proper documentation (212(a)(7))
 - Aliens previously removed (212(a)(9)(A))
 - DHS may not waive the following grounds for inadmissibility:
 - Conviction of certain crimes (212(a)(2)(A))
 - Multiple criminal convictions (212(a)(2)(B))
 - Controlled Substance Traffickers (212(a)(2)(C))
 - Procurement of prostitutes or the proceeds of prostitution (212(a)(D)(ii))
 - Aliens Involved in Serious Criminal Activity who Have Asserted Immunity from Prosecution (212(a)(2)(E))
 - Foreign Government Officials who Have Committed Particularly Severe Violations of Religious Freedom (212(a)(2)(G))
 - Significant Traffickers in Persons (212(a)(2)(H))
 - Money Laundering (212(a)(2)(I))
 - Security Related Grounds (212(a)(3))
 - Practicing Polygamists (212(a)(10)(A))
 - International Child Abduction (212(a)(10)(C))
 - Unlawful Voters (212(a)(10)(D))
 - *The Secretary may waive the application of any other provision of INA §212(a) not listed “for humanitarian purposes, to ensure family unity, or if such waiver is otherwise in the public interest.” (401(d)(2)(C))*
- Has not persecuted anyone on account of race, religion, nationality, membership in a particular social group, or political opinion.
- Has not been “convicted by final judgment of a particularly serious crime and constitutes a danger to the community of the United States”

- Is not reasonably believed to have committed a “particularly serious crime” outside the U.S. before arriving in the U.S.
- Is not reasonably regarded as a danger to the security of the United States
- Has not been convicted of a felony or 3 or more misdemeanors “for which the alien has served not less than 12 months of imprisonment in the aggregate.”

Civil penalties related to voluntary departure (240B) and reinstatement of removal orders do not apply to aliens applying for conditional nonimmigrant or dependent status. (401(d)(3))

Sec. 401(e). Contributions to the U.S. Through Employment, Education, Military Service, or other Community Service. To be eligible for conditional nonimmigrant status, an alien must attest under penalty of perjury that he or she is “contributing to the United States through one or more of the following”:

- Full-time, part-time, or seasonal employment in the U.S., is self-employment, or is actively seeking employment;
- Enrolled full or part-time in an accredited secondary or post-secondary school, university, or other institution of higher education, or an accredited vocational school;
- Member of the active or reserved Armed Services, the National Guard, or other “government sponsored civil service program”;
- “Otherwise establishes, to the satisfaction of DHS, that the alien is an active volunteer or community member”;

The contribution requirement does not apply to an alien who at the time of registration:

- is 65 or older;
- physically or mentally disabled;
- pregnant;
- a primary caregiver to a child, elderly or disabled person;
- on official extended medical leave;
- the spouse or child of a citizen or LPR; or
- came to the U.S. before age 16, lived here for 5 years and has not reached the age of 35 as of enactment (DREAM Act provision).

Sec. 401(g). Application Procedures

- Application shall be considered complete if it includes appropriate biometric data, fees, penalties, and full and complete answers attesting eligibility.
- DHS *may* require evidence upon initial application to establish prima facie eligibility; DHS *may* require additional evidence or an interview to make a final determination
- DHS shall impose an application fee sufficient to cover administrative costs. Fees are deposited into an “Immigration Examination Fee Account.”

- DHS shall impose a penalty of \$500. Exemptions include: dependents under 21, or individuals who came before 16, have lived here for at least 5 years and are under 35 (DREAM Act provision). Fines are deposited into the Security and Prosperity Account under INA 286(w).

Sec. 401(h) Treatment of Applicants

- Aliens who apply are considered enrolled until a final determination is made.
- Following submission of biometric data and successful security and criminal background checks, an alien:
 - Shall be granted employment authorization and may not be considered an “unauthorized alien” under INA 274A pending final adjudication;
 - Shall be granted permission to travel abroad; and
 - May not be detained for immigration purposes, determined inadmissible, or removed pending final adjudication of the alien’s application unless subsequent conduct makes the alien ineligible.
- DHS shall provide such aliens with a counterfeit-resistant authorization document that meets DHS requirements for travel documents and that reflects these benefits.
- If apprehended between the date of enactment and application, and the alien can establish prima facie eligibility, the alien shall not be detained and DHS shall provide the alien with a reasonable opportunity to file an application.
- If an immigration judge determines that an alien in removal proceedings has made a prima facie case of eligibility, the judge shall administratively close such proceedings and permit the alien a reasonable opportunity to apply.
- An alien ordered to be deported or to depart voluntarily may still apply for conditional nonimmigrant or dependent status. Such application shall stay the removal of the alien pending final determination. Approval of the application shall cancel the order of removal; denial of the application shall result in the order being effective.

Sec. 401(i) Classification

- Conditional nonimmigrant or dependent status shall entitle the alien to all the benefits described in §401(h). DHS may issue additional documentation as evidence of such status.
- Period of status is six years from date status is granted. DHS may extend this period for (an indefinite number of) 5-year increments, provided that the alien continues to meet the requirements.

Sec. 401(j) Termination of Benefits

- Benefits granted to aliens either *seeking classification* as a conditional nonimmigrant or dependent OR aliens classified as such shall terminate if:

- DHS determines the alien is ineligible and all review procedures under Sec. 603 have been exhausted or waived; or
- The alien has used documentation issued under this section for unlawful or fraudulent purposes.
- Benefits for the dependent are terminated with those of the principle alien, unless due to death of the primary applicant, provided that the spouse or child shall be given a reasonable opportunity to apply independently.

Sec. 401(k) Dissemination of Information on Conditional Nonimmigrant Program

- During 12 months immediately following issuance of regulations, DHS and other approved entities shall broadly disseminate information about this Section and its requirements.
- DHS shall disseminate information to employers and labor unions to advise them of rights and protections.
- Such information shall be broadly disseminated, in the principal languages, as determined by DHS, spoken by aliens who would qualify for classification, including tv, radio, and print media to which such aliens would have access.

Sec. 402(a). Adjustment of Status for Conditional Nonimmigrants; Requirements

- DHS may adjust the status of a conditional nonimmigrant or dependent **to LPR status** if the alien meets the requirements in this section.
- The alien shall establish that during the 5-year period immediately preceding the application for LPR status, he/she has fulfilled the requirements of conditional nonimmigrant status by demonstrating he/she:
 - Has not been convicted of offenses that render the alien inadmissible as described in 402(b);
 - Has satisfied “all past or current federal income tax liabilities” and is in good standing with the IRS (see more on taxes below);
 - Can establish that he/she has contributed to the community through employment, education, military service or other enterprise described in 402(d);
 - Has demonstrated sufficient mastery of basic English skills as described in (e); and
 - Establishes proof of registration under the Military Selective Service, if applicable.

Sec. 402(b). Admissible under Immigration Laws

- A conditional nonimmigrant or dependent applying for LPR status shall establish that he or she is not inadmissible under INA 212(a) except for any provisions that do not apply or DHS may waive.
 - The following grounds of inadmissibility shall not apply (same as under Sec. 401(d)):

- Failure to have Required Labor Certification (212(a)(5))
- Illegal Entry and Violation of Immigration Laws (212(a)(6))
- Failure to have proper documentation (212(a)(7))
- Aliens Previously Removed (212(a)(9)(A))
- DHS may not waive the following grounds for inadmissibility (same as Sec. 401(d)):
 - Conviction of certain crimes (212(a)(2)(A))
 - Multiple criminal convictions (212(a)(2)(B))
 - Controlled Substance Traffickers (212(a)(2)(C))
 - Procurement of prostitutes or the proceeds of prostitution (212(a)(D)(ii))
 - Aliens Involved in Serious Criminal Activity who Have Asserted Immunity from Prosecution (212(a)(2)(E))
 - Foreign Government Officials who Have Committed Particularly Severe Violations of Religious Freedom (212(a)(2)(G))
 - Significant Traffickers in Persons (212(a)(2)(H))
 - Money Laundering (212(a)(2)(I))
 - Security Related Grounds (212(a)(3))
 - Practicing Polygamists (212(a)(10)(A))
 - International Child Abduction (212(a)(10)(C))
 - Unlawful Voters (212(a)(10)(D))
- *The Secretary may waive the application of any other provision of INA §212(a) not listed “for humanitarian purposes, to ensure family unity, or if such waiver is otherwise in the public interest.” (401(d)(2)(C))*
- Civil penalties related to voluntary departure (240B) and reinstatement of removal orders do not apply to aliens applying for conditional nonimmigrant or dependent status. (401(d)(3))
- Any prior waiver of inadmissibility granted to an alien when applying for conditional nonimmigrant status shall remain in effect with respect to the specific conduct when applying for adjustment to LPR status.

Sec. 402(c). Payment of Income Taxes

- No later than the date of adjustment to LPR status, a conditional nonimmigrant or dependent shall satisfy “any applicable Federal tax liability” by establishing that:
 - No such tax liability exists;
 - All outstanding liabilities have been paid; or
 - The alien has entered into and is in compliance with an agreement for payment of all outstanding liabilities with the IRS.

- *“Applicable Federal Tax Liability” is defined as “liability for Federal taxes, including penalties and interest, owed for any year while classified as a conditional nonimmigrant or dependent for which the statutory period for assessment of any deficiency has not expired.*
- Treasury shall establish rules and procedures and the IRS shall provide documentation to
 - A conditional nonimmigrant or dependent, upon request, to establish the payment of all taxes required; and
 - DHS, upon request, regarding the payment of federal taxes under this section.

Sec. 402(d). Contributions to the U.S. through employment, Education, Military Service, or Other Commitment to the Community

- An alien shall demonstrate contributions to the U.S. by submitting evidence that he/she:
 - Is or has been engaged in full-time, part-time, self or seasonal employment in the U.S.;
 - Has completed or is enrolled in an accredited education program;
 - Is serving in the military or has completed military service;
 - Establishes to the satisfaction of DHS that the alien is an active volunteer or community member; or
 - Is exempt from these requirements under 401(e)(2) and is self-sufficient or self-supporting, including through the support of family, community members, or others as determined by DHS such that the alien is not a public charge.
- Conclusive documentation includes records maintained by SSA, IRS, the Armed Services, or any other federal, state or local government agency or public or private institution.
- An alien who is unable to submit conclusive documentation may submit to DHS at least 2 types of reliable documentation including:
 - Bank records
 - Business records
 - Employer records
 - Records from a labor union, day labor center, or organization that assists workers in employment;
 - Records of a charitable or 501(c)(3) organization
 - Sworn affidavits from non-relatives with direct knowledge
- DHS may designate additional documentation to serve as evidence under this section.
- Alien must establish the contribution to the U.S. requirement by a preponderance of the evidence (i.e. more likely than not).

Sec. 402(e) Basic Citizenship Skills.

- A conditional nonimmigrant shall establish that he or she:
 - Meets the requirements of INA §312;

- Earned a high school diploma or GED; or
- Is satisfactorily pursuing a course of study to achieve such an understanding of English and knowledge and understanding of history and U.S. government.
- A conditional nonimmigrant or dependent who demonstrates that he/she meets the requirements under INA §312 may be considered to have satisfied the requirements of that section for purposes of naturalization.
- The basic citizenship skills requirement shall not apply to any person who is physically disabled or mentally impaired as described in INA §312(b)(1).
- DHS may waive these requirements for aliens 65 or older.

Sec. 402(f) Application Procedure, Fees, and Fines

- A conditional nonimmigrant or dependent seeking LPR status shall submit to a full medical examination and security and law enforcement checks required under INA §245.
- DHS shall impose a filing fee sufficient to cover administrative expenses.
- Fees collected shall be deposited into the Immigration Examination Fee Account (INA §286).

Sec. 402(g) Treatment of Conditional Nonimmigrant Dependents

- DHS may adjust the status of conditional nonimmigrant dependents to LPR status if the principal has been found eligible for LPR status, provided the dependent meets the applicable requirements
- DHS may still adjust the status of dependent spouses or children of a conditional nonimmigrant, or an alien eligible for such status if:
 - termination of the relationship with such spouse or parent was connected to domestic violence;
 - the spouse or child has been battered or subjected to extreme cruelty by the spouse or parent; and
 - the dependent complies with applicable requirements.

Sec. 402(h). Back of the Line

- An alien may not adjust to LPR status under this act until the earlier of
 - 30 days after an immigrant visa becomes available for applications for family or employment-based green cards filed before the date of enactment of this Act; or
 - Six years after the date of enactment.
- Aliens qualifying for conditional nonimmigrant because they came to the U.S. before 16, have lived in the U.S. for 5 years and are not yet 35 (DREAM Act eligibility) shall be eligible for LPR status immediately upon the completion of one of the following:
 - A degree from an institution of higher education in the U.S., or completion of at least 2 years, in good standing, in a program for a bachelor's degree or higher degree in the U.S.

- At least two years of service in the uniformed services, and if discharged, has received an honorable discharge.
- At least two years of full-time, part-time, or seasonal employment prior to the date of application.

Such aliens are also eligible to apply for citizenship 3 years after receiving LPR status.

- Prohibits granting of benefits to aliens who adjust status under Section 401 unless they have complied with the requirements of Section 403 of the Welfare Reform Act.

Sec. 403(a) Administrative Review

- DHS shall establish an independent appellate authority within the Bureau of Citizenship and Immigration Services to provide for a single level of administrative appellate review of applications under this subtitle.
- Such appellate review shall be based solely on the administrative record established at the time of determination and upon the presentation of additional or newly discovered evidence during the time of pending appeal or subsequently on motion to reopen.

Sec. 403(b) Judicial Review

- If an alien's application is rejected after administrative appellate review, the alien may seek review in accordance with chapter 7 of title 5 United States Code (Judicial Review for Government Agencies)
- There shall be judicial review in the federal courts of appeal of the denial classification or adjustment of status under this title in conjunction with judicial review of an order of removal, deportation, or exclusion.
- Judicial review shall be based upon the administrative record at the time of review, but the court may remand the case to the agency for consideration of additional evidence "where the court finds that the evidence is material and there were reasonable grounds for failure to adduce the evidence before the agency." Judicial review of a denial shall be governed by Chapter 7 of Title 5 of the United States Code.
- U.S. District Courts have jurisdiction over "any cause or claim arising from a pattern or practice of [DHS] in the operation or implementation of this subtitle that is arbitrary, capricious, or otherwise contrary to law," and may order any appropriate relief, without regard to exhaustion, ripeness, or other standing requirements (other than constitutionally mandated ones) if the court determines that resolution of such cause or claim "will serve judicial and administrative efficiency or that a remedy would otherwise not be reasonably available or practicable."
- Aliens seeking administrative or judicial review shall not be removed from the U.S. until a final decision is rendered establishing ineligibility.

Sec. 404. Mandatory Disclosure of Information

- DHS and the State Department shall provide a law enforcement agency that submits a written request the application information, and any other information derived from it, in connection with a criminal investigation or prosecution, or national security investigation or prosecution.
- Except as otherwise provided, no federal agency or any federal officer, employee, or agent may:
 - use the application information for any purpose other than to make a determination on the application;
 - “make any publication through which the information furnished by any particular applicant can be identified”; or
 - permit anyone other than the sworn officers and employees of such agency to examine individual applications.
- Any person who knowingly uses, publishes, or permits information to be examined in violation of this section shall be fined not more than \$10,000.

Sec. 405. Penalties for False Statements in Applications

- Provides that an individual who knowingly and willfully falsifies or conceals a material fact, uses a false document, or provides a false document for purposes of the application is punishable by up to 5 years imprisonment and a fine in accordance with the U.S. criminal code (Title 18).
- An alien who is convicted of making false statements/submissions shall be considered inadmissible under INA 212(a)(6)(C)(i).
- An employer who submits a record with incorrect data used by the alien to obtain such employment shall not violate this section.

Sec. 407. Employer Protections

- Employers of aliens applying for conditional nonimmigrant or dependent status, or adjustment to LPR status, shall not be subject to civil and criminal tax liability relating directly to the employment of such alien.
- Employers that provide illegal aliens with copies of employment records or other evidence of employment shall not be subject to civil and criminal liability for unlawful employment of illegal aliens under INA 274A.

Sec. 408 Limitations on Eligibility

- An alien is not ineligible for conditional nonimmigrant status solely on the basis that the alien, between enactment and the date of application, violated 18 U.S.C. §1543 (forgery or false use of passport), §1544 (misuse of passport), or §1546 (fraud and misuse of visas and other documents).
- An alien may be prosecuted for violations these sections that take place between enactment and the date of application if an alien’s application is denied.

Sec. 409 Rulemaking

- Authorizes DHS to promulgate regulations regarding the timely filing and processing of applications for benefits under this subtitle.

Sec. 410 Correction of Social Security Records

- Amends Social Security Act to provide that aliens covered under this subtitle are immune from prosecution for:
 - Willfully and knowingly furnishing false information to the SSA
 - For the purpose of obtaining an unauthorized payment or anything of value from any person, using social security number based on false information submitted to the SSA
 - With intent to deceive, falsely representing that an SSN assigned to another is his
 - Altering a social security card, buying or selling a fraudulent card, forging a card, or possessing a social security card or counterfeit card with the intent to sell.
- If the conduct takes place before the alien applies for LPR status under this title.

Sec. 411. Restoration of State Option to Determine Residency for Purposes of Higher Education Benefits

- Repeals Sec.505 of IIRIRA (8 U.S.C. 1623), which provides that a state may not offer in-state tuition to illegal aliens unless the state offers in-state tuition to all U.S. citizens and nationals, without regard to residency.
- Makes effective date retroactive to 1996.

Sec. 412. Authorization of Appropriations

- Authorizes Congress to appropriate such sums as may be necessary to carry out this subtitle. Provides that funds are available until expended.