



FEDERATION FOR AMERICAN IMMIGRATION REFORM

SUMMARY: **S. 744**

Registered Provisional Immigrant Status, the DREAM Act & AgJOBS

On April 17, 2013, Senators Chuck Schumer, John McCain, Dick Durbin, Lindsay Graham, Bob Menendez, Marco Rubio, Michael Bennet, and Jeff Flake introduced S.774, entitled the Border Security, Economic Opportunity, and Immigration Modernization Act. If passed, S.744 would grant amnesty to the approximately 12 million illegal aliens currently living in the U.S., admit hundreds of thousands of new agricultural and low-skilled guest workers, and significantly increase legal immigration.

Below is a summary of three major amnesty provisions in the bill. The first is the blanket amnesty provision, which authorizes the Department of Homeland Security (DHS) to grant legal status — called “registered provisional immigrant” status (RPI status) — to illegal aliens who have been in the United States since December 31, 2011. The second amnesty provision is the DREAM Act, which authorizes DHS to give green cards to RPI aliens who entered the U.S. before the age of 16 and meet certain additional requirements. The third amnesty provision is AgJOBS, which in this bill is called the Agricultural Worker Program—reminiscent of the Special Agricultural Worker Program that was part of the 1986 amnesty (Immigration Reform and Control Act). AgJOBS grants amnesty to illegal farm workers who can demonstrate they have worked in agriculture for a required period of time.

I. Registered Provisional Immigrant Status

General Authorization (Sec. 2101, INA 245B(a), p.59-60)

After conducting required background checks, DHS may grant “registered provisional immigrant” (RPI) status to an alien who:

- Is eligible;
- Applies on time;
- Submits biometric and biographic data (Sec. 2101, INA 245B(c)(8), p. 78-79); and
- Pays an unspecified fee and a \$1,000 penalty, payable in installments. DHS may exempt defined classes of individuals from the fees, including DREAMers. (Sec. 2101, INA 245B(a), p.60)(*See also* Sec. 2101, INA 245B(c)(10), p. 81-84).

Duration of Status and Extension (Sec. 2101, INA 245B(c)(9), p.79-84)

- RPI status is valid for 6 years and renewable indefinitely

- An alien is eligible to renew if he/she:
 - Remains eligible for RPI status;
 - Meets certain employment/education requirements (waivable), which require the alien to establish that he/she
 - Was regularly employed throughout RPI status (60-day periods excepted);
 - Is not likely to become a public charge; and
 - Is able to demonstrate average income not less than the poverty level (100 percent of the federal poverty level) throughout RPI status.
 - Has not had his/her RPI status revoked;
 - Has satisfied any federal tax liability that has been “assessed”;
 - Pays a processing fee (aliens 16 or older), though DHS may cap and/or waive the fees. (p.83); and
 - Pays a \$1,000 penalty (aliens 21 or older).

Terms and Conditions of RPI Status (Sec. 2101, INA 245(d), p.87)

- RPI aliens shall be work authorized
- RPI aliens may travel outside the U.S. and be re-admitted if:
 - The alien has a valid RPI document that meets certain security requirements
 - The alien’s absence did not exceed 180 days, unless the alien’s failure to timely return was due to extenuating circumstances
 - The alien meets the requirements for an extension and
 - The alien establishes that he is not inadmissible as a national security threat
- RPI aliens shall be considered to have been admitted to the U.S. and lawfully present and in RPI status as of the application date.
- An RPI alien:
 - Is lawfully admitted to the U.S. and
 - May not be classified as a nonimmigrant or an LPR

Eligibility Requirements (Sec. 2101, INA245B(b), p.60-68)

- An alien must demonstrate by a preponderance of the evidence that the alien:
 - Is physically present in the U.S. on the date of application
 - Has been physically present in the U.S. on or before 12/31/11, except absences that are “brief, casual, and innocent”
 - Has maintained continuous physical presence (except absences up to 180 days) in the U.S. from Dec. 31, 2011 until receiving RPI status
- Waivers (Sec. 2101, INA 245B(b)(4), p.66)

- Civil penalties for failure to depart under INA shall not bar any alien from filing an RPI application
- Frivolous applications for asylum shall not bar an alien applying for RPI status
- Dependents of RPI aliens may apply for derivative status even if they were not in the U.S. before 12/31/11 and did not have continuous presence in the U.S. since that date. (Sec. 2101, INA 245B(b)(5)(A), p.66)
- DACA Recipients (Sec. 2101, INA 245B(c)(13), p.86)
 - DHS may grant RPI status to DACA recipients, unless the alien “has engaged in conduct since the alien was granted DACA that would make the alien ineligible for RPI status.”

Eligibility After Departure (Sec. 2101, INA245B(c)(6), p.71)

- An alien outside the U.S. who: (1) departed while subject to a removal or voluntary departure order; or (2) reentered illegally after 12/31/11, may not apply for RPI status
- *DHS may waive this if the alien:*
 - Is the spouse/child of a U.S. citizen or LPR;
 - Is the parent of a child who is a U.S. citizen or LPR;
 - Entered the U.S. before 16, has a high school degree or GED in the U.S.; or
 - Was younger than 16 on the date he/she initially entered the U.S., is 16 years or older on the date of application, and was physically present in the U.S. for at least 3 out of the 6 years prior to enactment
- For purposes of the waiver, aliens are eligible despite failure to meet the physical presence requirement or any reinstatement of removal orders.

Grounds for Ineligibility (Sec. 2101, INA 245B(b)(3), p.61-66)

An alien is ineligible for RPI status if he/she:

- Has a conviction for a felony in the convicting jurisdiction (other than a state or local offense based on immigration status)
- Has a conviction for an aggravated felony as defined under 101(a)(43)
- Has a conviction for 3 or more misdemeanors (other than a state/local offense based on immigration status) if the alien was convicted on different dates for each of the offenses (waivable, p.65)(Sec. 2102(b)(3)(B)(i))
- Has a conviction for any offense under foreign law that if committed in the U.S. would render the alien inadmissible or removable under the INA (INA 212(a); 237(a))
- Has a conviction for unlawful voting under INA 237(a)(6)
- Is reasonably believed to be engaged in, or likely to engage in, terrorist activity (Sec. 2102(b)(3)(A)(iii))

- Is an LPR, a refugee/asylee, or a nonimmigrant (meaning the alien is legal) (2102(b)(3)(A)(iv))

Grounds of Inadmissibility Waived (Sec. 2101, INA 245B(b)(3), p.63)

- Public charge (INA 212(a)(4))
- Alien workers without labor certification (INA 212(a)(5))
- Aliens present without permission or parole (INA 212(a)(6)(A))
- Aliens who fail to attend removal proceedings (absconders) unless after application (INA 212(a)(6)(B))
- Aliens seeking admission within 5 years of being ordered removed unless after application (INA 212(a)(9)(A))
- Aliens who obtain immigration documents through fraud unless after enactment (INA 212(a)(6)(C)(i))
- Aliens who falsely claim citizenship unless after enactment (INA 212(a)(6)(C)(ii))
- Stowaway aliens unless after enactment (INA 212(a)(6)(D))
- Aliens subject to a final order of removal for document fraud unless after enactment (INA 212(a)(6)(F))
- Alien students who violate terms of their visas unless after enactment (INA 212(a)(6)(G))
- Immigrants who do not possess proper documents (INA 212(a)(7)(A))
- Nonimmigrants who do not possess proper documents (INA 212(A)(7)(B))
- 3 and 10 year bars based on the duration of unlawful presence in the U.S. (INA 212(a)(9)(B))
- Aliens illegally in the U.S. for 1+ yrs, who are ordered removed and attempt to re-enter unless after enactment (INA 212(a)(9)(C))
- Guardians required to accompany inadmissible, disabled aliens unless after enactment (INA 212(a)(10)(B))

Grounds of Inadmissibility DHS may NOT Waive (Sec. 2101, INA 245B(b)(3)(B)(ii), p.65)

- Aliens convicted of 2+ offenses for which the aggregate prison sentences are 5+ years (INA 212(a)(2)(B))
- Aliens who are/were drug traffickers (INA 212(a)(2)(C))
- Aliens who have imported or attempted to import prostitutes or receive proceeds therefrom within 10 yrs of application for a visa (INA 212(a)(2)(D))
- Aliens who commit a “serious criminal offense,” claim immunity, and leave the U.S. (INA 212(a)(2)(E))
- Foreign officials who have committed severe violations of religious freedom (INA 212(a)(2)(G))

- Human traffickers (“severe forms of human trafficking,” not sons or daughters) INA212(a)(2)(H)
- Money launderers (INA 212(a)(2)(I))
- Aliens who have engaged/incited terrorist activity or who are members/representatives of a terrorist organization (INA (a)(3)(B)(i))
- Practicing polygamists (INA 212(a)(10)(A))
- International child abductors (until surrender of child to lawful custodian/parent) (INA 212(a)(10)(C))
- Aliens who vote in violation of federal, state, or local laws (INA 212(a)(10)(D))
- Former citizens who renounce citizenship to avoid taxes (INA 212(a)(10)(E))
- Aliens who obtain, attempt to obtain admission documents through fraud if related to an RPI application (INA 212(a)(6)(C)(i))

Grounds of Inadmissibility that are Waivable (Sec. 2101, INA245B(b)(3)(B)(i), p.65)

- Committing crimes or of moral turpitude (INA 212(a)(2)(A)(i)(I));
- Violating federal or state drug laws (INA 212(a)(2)(A)(i)(II));
- Trafficking in passports (INA 212(a)(2)(A)(i)(III))(added to the INA by §3709);
- Providing fraudulent immigration services (INA 212(a)(2)(A)(i)(III))(added to the INA by §3709);
- Trafficking immigration documents, including document fraud (INA 212(a)(2)(A)(i)(III)) (added to the INA by §3709);
- Prostitution (INA 212(a)(2)(D)(i));
- Gang membership (INA 212(a)(2)(F))(added to the INA by §3701);
- Misrepresenting a material fact to procure visas or other immigration benefits (if done for any purpose other than submitting an amnesty application) (INA 212(a)(6)(C)(i));
- Violating student visas (INA 212(a)(6)(G));
- Falsely claiming citizenship (INA 212(a)(6)(C)(ii)); and
- Illegally re-entering the U.S. after deportation (a felony)(INA 212(a)(9)(C)).

Application Process (Sec. 2101(c), p.68)

- RPI applicants shall be treated as applicants for admission
- An alien may not file an RPI application unless the applicant has satisfied “all federal income taxes assessed” in accordance with the tax code.
- Application period begins on the date DHS publishes a final rule, lasts one year, and may be extended for another year. As part of the rule:
 - DHS may create a family application
 - DHS may interview applicants

Shielding Illegal Aliens During the Amnesty Process (Sec. 2101, INA 245B(c)(5), p.70)

- **Illegal Aliens Who Have Not Applied**
 - If alien is apprehended between the date of enactment and the end of the application period and “appears prima facie eligible” for RPI status, DHS:
 - Shall provide the alien an opportunity to file a timely application; and
 - May not remove the individual – for any reason – until “a final administrative determination” is made on the application (apparently allow the aliens time to appeal an adverse decision before DHS can remove the alien).
- **Illegal Aliens Who Have Applied (p.76-77)**
 - Between the date an alien files an RPI application and the date DHS makes a “final decision” on the application, an alien:
 - may receive advance parole if urgent humanitarian circumstances compel such travel;
 - may not be detained or removed – for any reason – unless DHS first makes a prima facie determination that the alien is or has become ineligible;
 - shall not be considered unlawfully present for purposes of the 3 and 10 year bars to admission;
 - shall not be considered an unauthorized alien for employment purposes; and
 - shall receive documentation that the alien has filed an application.
 - An employer who knows that an alien is an RPI applicant or will apply for RPI status is not in violation of INA 274(a)(2) for continuing employment of an illegal alien pending adjudication of the application.
- **Aliens in Removal Proceedings (p.73)**
 - If DHS determines that an alien, between enactment and the end of the application period, is in removal proceedings before the Justice Department’s Executive Office for Immigration Review (EOIR) and is “prima facie eligible” for RPI status:
 - DHS shall give the alien an opportunity to file an RPI application
 - EOIR shall, upon motion by DHS or the alien
 - terminate removal proceedings w/o prejudice, and
 - the alien a reasonable opportunity to apply
 - IF EOIR determines that an alien, during the application period, is in removal proceedings before EOIR and is prima facie eligible for RPI status:
 - EOIR shall notify DHS, and

- If DHS does not dispute the determination of prima facie eligibility w/n 7 days, EOIR shall:
 - terminate such proceedings w/o prejudice, and
 - give the alien a reasonable opportunity to apply
- Aliens Ordered Removed (Sec. 2101, INA 245B(c)(7), p.75)
 - An alien in the U.S. who has been ordered removed (including voluntary departure, but meets the eligibility requirements, is eligible to apply for RPI status notwithstanding the removal order (or a reinstatement thereof).

Shielding Information in Applications (Sec. 2104 p.117)

- No officer or employee of any federal agency may:
 - Use application information submitted for RPI status or green cards (including the DREAM Act) for any purpose other than to make a determination on any application for any immigration benefit or protection
 - Make any publication through which a particular applicant can be identified
 - Permit anyone other than the sworn officers, employees, and contractors of such agency or another agency approved by DHS to examine individual applications that have been filed
- DHS shall provide information submitted in applications for RPI status and green cards (including the DREAM Act), and any information derived therefrom, to:
 - A law enforcement agency, court, or grand jury if the information is requested by such entity, consistent with law, in connection with:
 - A criminal investigation or prosecution of any matter not related to the applicant's immigration status; or
 - A national security investigation or prosecution.
 - An official coroner for purposes of affirmatively identifying a deceased individual
- DHS may audit information submitted in applications for RPI status and green cards (including the DREAM Act) for purposes of identifying fraud and use any evidence detected by such audits for purposes of investigating, prosecuting, denying or terminating immigration benefits.
- Employment records supplied by an alien or employer to support an alien's application for RPI status may not be used in a civil or criminal prosecution or investigation of that employer under INA 274A *regardless of the outcome of the application*. Employers that provide unauthorized aliens with copies of employment records for an RPI application shall not be subject to civil and criminal liability under INA 274A.
- Adds a new section to the criminal code which provides that any person who knowingly uses, publishes, or permits information described application information to be examined

in violation of such section shall be fined not more than \$10k. Such fine shall be submitted to the CIR trust fund. (Sec. 2105, p.130)

Opportunity for Illegal Aliens to Challenge Denial of Amnesty and/or Green Cards (these provisions also apply to aliens obtaining amnesty through the DREAM Act or AgJOBS) (Sec. 2104, INA 245E(c), p. 120)

- Administrative Review
 - DHS shall provide for a single level of administrative appellate review of a determination of applications under provisions granting RPI status or green cards to illegal aliens (including aliens applying through the DREAM Act or AgJOBS)
 - Administrative review of determination on an application for RPI status or green cards shall be conducted solely in accordance with this subsection
 - Aliens whose applications for RPI status or green cards have been denied or revoked may file only one appeal with DHS
 - Such appeal shall be filed not later than 90 days after the date of denial or revocation, unless the delay is reasonably justifiable
 - Aliens seeking administrative review shall not be removed from the U.S. (for any reason) until a “final decision” establishing ineligibility has been made
 - Administrative appellate review shall be de novo and based on: (1) the administrative record, and (2) any new evidence.
 - During the period of administrative review, the alien shall not be considered “unlawfully present” for purposes of the 3 and 10 year bars
- Judicial Review (Sec.2104(b), p.124)
 - If DHS denies RPI status, or revokes RPI status after exhaustion of administrative remedies, the alien may seek review of such decision in federal court
 - While the federal court reviews the case:
 - The alien shall not accrue unlawful presence for purposes of the 3 and 10-year bars;
 - Any unexpired time for voluntary departure shall be tolled, and
 - The court shall have discretion to stay the execution of any removal order.
 - An alien may appeal an adverse decision in a federal circuit court of appeals in conjunction with the judicial review of an order of removal if the validity of the denial has not been upheld by the district court
 - Judicial review shall be based on the administrative record established at the time of review
 - A court may remand the case to DHS for consideration of additional evidence if the court finds that:
 - The additional evidence is material, and

- There were reasonable grounds for failure to adduce the additional evidence before the Secretary.
- Federal courts may hear cases challenging a DHS “pattern or practice” in the implementation of the amnesty that is “arbitrary, capricious, or otherwise contrary to law.” District courts may order any appropriate relief for such challenges without regard to exhaustion, ripeness, or other standing requirements (other than constitutionally mandated requirements) if the court determines that:
 - The resolution of such cause or claim will serve judicial and administrative efficiency, or
 - A remedy would otherwise not be reasonably available or practicable.
- Except for challenges to patterns or practices (above), any claim that the provisions granting RPI status, green cards (including the DREAM Act), the protection of application information, and the appeals process, or any regulation, written policy, or written directive, issued or unwritten policy or practice initiated under the authority of the Secretary of DHS violates the constitution or otherwise violates the law, is available exclusively in U.S. district court.
- Class action claims shall be made in conformity with the Class Action Fairness Act and the Federal Rules of Civil Procedure
- No claims brought under this paragraph shall require the plaintiff to exhaust administrative remedies
- Courts may stay proceedings to permit DHS to evaluate an allegation of an unwritten policy or practice or to take corrective action.
- Provides that current law (INA 244(h) requiring the Senate to have a super majority to pass any law that grants green cards to aliens with temporary protected status (TPS) shall not apply to aliens applying for green cards under the amnesty or DREAM Act provisions (thus placing TPS aliens on the path to citizenship)
- Provides that failure to register pursuant to 8 CFR 264.1(f) (special registration for aliens from certain designated countries) or being subject to a removal order for non-compliance before the date of enactment shall not make an alien ineligible for any benefits under the INA

Evidence of RPI Status (Sec. 2101, INA 245B(c)(12), p.85)

- DHS shall issue documentary evidence of RPI status to aliens with approved applications. These documents:
 - Shall be machine-readable, tamper-resistant, and contain a digitized photograph
 - Shall serve as valid of travel/entry documents for the purpose of applying for admission
 - May be accepted by an employer as evidence of work authorization and identity

- Shall indicate the alien is authorized to work for up to 3 years
- Shall include any other features determined by DHS

Revocation of RPI Status (Sec. 2101, INA 245B(d)(2), p.89)

- DHS may (but does not have to) revoke RPI status at any time *after* giving “appropriate notice” to the alien, and *after* the exhaustion or waiver of all applicable administrative review procedures, IF the alien:
 - Is no longer eligible;
 - Knowingly used RPI documents for fraud;
 - Was absent from the U.S. for too long, either:
 - A single period longer than 180 days, or
 - More than 180 days in a calendar year, unless there are extenuating circumstances.
- If DHS revokes RPI status, any documentation issued shall automatically be rendered invalid for any purpose except departure

Eligibility for Benefits (Sec. 2101, INA 245B(d)(3), p. 90)

- **Federal means-tested public benefits.** An RPI alien is ineligible for “any federal means-tested public benefit” (as defined *and implemented* by 8 U.S.C. 1613)
 - An RPI alien shall be considered lawfully present in the U.S. for all purposes while in RPI status, except that the alien:
 - Is not entitled to the tax credit authorized in the Affordable Care Act (Obamacare) (26 U.S.C. 36B) for his or her coverage;
 - Shall be subject to the rules applicable to individuals not lawfully present set forth in subsection (e) of such section;
 - Shall be subject to the rules applicable to individuals not lawfully present that are set forth in section 1402(e) of Obamacare; and
 - Is not subject to the requirement that individuals obtain health care insurance under 26 U.S.C. 5000A(d)(3).
- **Social Security** (Sec. 2101, INA 245B(d)(4), p.91-92)
 - RPI aliens shall receive a social security number and social security card

Enlistment in the Armed Forces (Sec. 2101(b), p.93)

- Amends 10 U.S.C. 504 to allow RPI aliens to enlist in the military (current law allows only citizens and LPRs to enlist)

Eligibility to Adjust to LPR Status (Sec. 2102, INA 245C(a) and (b), p. 94)

DHS may adjust the status of an RPI alien to LPR status if the alien:

- Was granted RPI status and remains eligible for such status;
- Establishes that he/she was not continuously absent from the U.S. for more than 180 days in any calendar year while in RPI status;
- Is not inadmissible (grounds previously waived shall not apply);
- Has not been notified that DHS intends to revoke the alien's RPI status, unless DHS has subsequently determines not to revoke RPI status;
- Has satisfied all federal income taxes assessed while the alien was authorized to work as an RPI alien;
- Establishes that he/she:
 - Was "regularly employed" during RPI status, allowing for brief periods lasting not more than 60 days
 - An alien may satisfy this requirement by submitting government records that establish compliance by a preponderance of the evidence
 - An alien unable to submit government records may satisfy the employment requirement may submit other documents DHS approves, including bank records, employer records, and "sworn affidavits from non-relatives who have direct knowledge of the alien's work or education..."
 - An alien may satisfy the employment requirement in whole or part by providing evidence of "full-time attendance" at
 - An institution of higher education;
 - A secondary school;
 - An education, literacy, or career training program designed to lead to placement in post-secondary education, job training or employment, or
 - An education program assisting students either in obtaining a high school equivalency diploma or GED
 - Is not likely to become a public charge;
 - Demonstrates average income or resources not less than 125 percent of the federal poverty level.
 - The employment/education requirement does not apply to:
 - Aliens under 21 at application for first extension of RPI status;
 - Aliens 60+ at time of application for extension of RPI status or 65+ on date of application for LPR status;
 - Aliens who have a physical or mental disability, or as a result of pregnancy [drafting error?];
 - Dependents of RPI aliens;
 - Any period in which the alien:

- Was on medical leave, maternity leave, or other employment leave authorized by law
- Is/was the primary caretaker of a child or another person unable to care for himself
- Was unable to work due to circumstances outside the control of the alien (high unemployment?)
 - DHS may waive the employment or education requirement with respect to any alien who demonstrates extreme hardship to himself or a spouse, parent, or child who is a U.S. citizen or LPR
- Has the required English skills
 - An RPI 16 years or older shall establish that he/she:
 - Meets the English and civics requirements of INA 312, OR
 - Is satisfactorily pursuing a course of study “to achieve an understanding of English and knowledge and understanding” of civics (p. 103)
 - English requirement does not apply to aliens unable to comply because of a physical or mental impairment
 - DHS may waive the English requirement to RPI aliens 70 years or older.
- Registered for the military selective service, if the alien is subject to registration on or before the date RPI status is granted

Application Process for LPR Status (Sec. 2102, INA 245C(c), p.104)

- RPI aliens may apply for LPR status by submitting evidence required to establish eligibility
- DHS may not adjust an RPI alien to LPR status until after DHS certifies “that immigrant visas have become available for all approved petitions for immigrant visas that were filed under sections 201 and 203 before the date of enactment”
- DHS may interview LPR applicants
- DHS may not adjust an RPI alien to LPR status “until renewed national security and law enforcement clearances have been completed”
- DHS shall impose a fee to recover the full cost and submit it into the CIR trust fund. However, DHS may limit the maximum fee payable by a family and exempt “defined classes of individuals” from the fee.
- Aliens 21+ years on the date of introduction shall pay a \$1,000 penalty unless the alien falls under the DREAM Act. The penalty may be paid in installments and shall be submitted to the CIR trust fund.

- RPI aliens may only adjust to LPR status under provisions relating to RPI aliens, RPI aliens applying through the DREAM Act, or through the Merit-Based Track Two system created by Section 2302.

Naturalization (Sec. 2102(c), p.109)

- Allows all aliens who are lawfully present in the U.S. and eligible for work authorization for not less than 10 years before becoming an LPR to naturalize in 3 years (note that applicants for admission from outside the U.S. still have to wait 5 years)

Privacy of Illegal Aliens (Sec. 2104, 245E(d), p.123)

- DHS shall require “appropriate administrative and physical safeguards to protect the security, confidentiality, and integrity of personally identifiable information collected” through RPI applications and green card applications filed pursuant thereto (including the DREAM Act)
- DHS shall conduct a “privacy impact assessment and a civil liberties impact assessment” of the RPI program and the DREAM Act during the pendency of the interim final regulations issued under Sec. 2110 of this Act

Grant Program to Assist Illegal Aliens (Sec. 2106, p. 131)

- Authorizes USCIS to establish a \$50M program (funded by the CIR trust fund) to award grants on a competitive basis to nonprofits to assist illegal aliens applying for amnesty, green cards, and the DREAM Act under INA 245B, 245C, or 245D.

Exemptions Granted to DHS to Implement the Amnesty Act (Sec. 2108, p.142)

- Exempts DHS from government contracting and hiring rules to implement all of the amnesty programs under the Act.
- Authorizes DHS to make term, temporary, limited, and part-time appointments of employees who will implement this title and the amendments made by this title without regard to the number of such employees, their ratio to permanent full-time employees, and the duration of their employment.

II. The DREAM Act (Sec. 2103, p.110)

General Authority (Sec. 2103(b), INA 245D(b), p. 111)

- DHS may adjust the status of an RPI alien to LPR status if the alien demonstrates that:
 - The alien has been an RPI alien for at least 5 years;

- The alien was younger than 16 on the date of initial entry to the U.S.;
- Has earned a high school diploma, a “commensurate alternative award from a public or private high school or secondary school,” a GED, or a high school equivalency diploma in the U.S.;
- He/she satisfies the following education/service requirement:
 - Has completed at least 2 years at an institution of higher education for a bachelor’s degree or higher, OR
 - Has served in the “Uniformed Services” (not armed forces) for at least 4 years (with an honorable discharge, if any)
- Has provided DHS a list of each secondary school the alien has attended in the U.S.
- He/she has provided biometric and biographic data and undergone background checks
- DHS may waive the education/service requirement if the alien demonstrates “compelling circumstances for the inability to satisfy the requirement”

Application Process (Sec. 2103(b), INA 245D(b)(2), p. 114)

- An RPI alien seeking LPR status must submit an application
- DHS shall evaluate each application and notify the alien of his/her status adjustment or an adverse determination
- DHS may adopt regulations that implement streamlined procedures for DACA aliens

Naturalization (Sec. 2103(b), INA 245D(b)(3), p.116)

- An alien granted LPR status under the DREAM Act shall be considered to have been in the U.S. as an LPR during the 5-year period he/she was an RPI alien (allowing the alien to immediately apply for naturalization upon receiving LPR status)

Exemption from Numerical Caps (Sec. 2103(c), p. 116)

- RPI aliens or DREAMers who adjust to LPR status *are exempt from all numerical caps* under INA 201(b)

In-State Tuition (Sec. 2103, INA 245D(d), p. 117)

- Retroactively repeals 8 U.S.C. 1623 (Sec. 505 of IIRAIRA), thereby authorizing states to offer in-state tuition to illegal aliens

III. Agricultural Worker Program of 2013 (AgJOBS)

Definitions (Sec. 2202, p. 152-153)

- “Blue card status” means the status of an alien lawfully admitted into the U.S. for temporary residence under Sec. 2111
- “Agricultural employment” has the same meaning given in section 3 of the Migrant and Seasonal Agricultural Worker Protection Act, without regard to whether the service or activity is temporary or seasonal
- “Child” has the same meaning as under INA 101(b)(1)
- “Employer” means any person or entity, including a farm labor contractor and any agricultural association that employs workers in agricultural employment
- “Qualified Designated Entity” (QDE) means:
 - A qualified farm labor organization or association of employers designated by DHS, or
 - Any other entity DHS designates as having substantial experience, demonstrated competence, and a history of long-term involvement in the preparation and submission of applications for adjustment of status under the INA.
- “Work day” means any day in which the individual is employed 5.75 or more hours in agricultural employment

General Authorization (Sec. 2211(a), p.153)

- After conducting “national security and law enforcement clearances” required for RPI status, DHS may grant “blue card” status to an alien (including spouses and children) who:
 - Performed “agricultural employment” in the U.S. for at least 575 hours or 100 work days during the 2-year period ending Dec. 31, 2012);
 - Submits a completed application on time
 - Is not ineligible for RPI status (exception allows H-2As to apply)
- DHS shall collect from each applicant biometric, biographic, and other data that DHS determines appropriate to:
 - Conduct “national security and law enforcement clearances”; and
 - Determine whether there are any national security or law enforcement factors that would render an alien ineligible.
 - DHS shall complete the required “clearances” before granting an alien blue card status (p.163-164)
- Applicants for blue card status (and renewal) shall pay a “processing fee” in an amount determined by DHS. (p.165-166) The fee shall recover the full costs of processing the application. DHS may limit the fee paid by a family and children under 21 and exempt defined classes. Fees shall be deposited into the CIR trust fund.

- Applicants for blue card status who are over 21 shall pay a \$100 penalty (p.166)
Penalties shall be deposited into the CIR trust fund.

Terms and Conditions of Blue Card Status (Sec. 2211(c))

- No alien may remain in blue card status 8 years after regulations are published (p. 164)
- DHS may not extend blue card status until “renewed national security and law enforcement clearances” have been completed (but what is the original length?) (p. 164)
- Aliens with blue card status shall be work authorized (p.169)
- Aliens with blue card status may travel outside the U.S. and may be admitted, if otherwise admissible, upon returning if:
 - The alien is in possession of valid blue card status documents
 - The alien’s absence from the U.S. did not exceed 180 days, unless failure to return timely was due to “extenuating circumstances beyond the alien’s control; and
 - The alien establishes that he is not inadmissible on national security grounds (INA 212(a)(3)). (p. 170)
- An alien granted blue card status:
 - Shall be considered lawfully admitted to the U.S. and in such status since the date of application;
 - May not be classified as a nonimmigrant or LPR; (p.170)

Eligibility for Benefits (Sec. 2211(c)(3) and (c)(4), p.172-173)

- A blue card alien is not eligible for any federal means-tested public benefit as defined in 8 U.S.C. 1613 (p.172)
- A blue card alien shall be considered lawfully present in the U.S. for all purposes, except the alien:
 - Is not entitled to Affordable Care Act tax credits authorized in Section 36B of the Tax Code
 - Shall be subject to the rules applicable to individuals not lawfully present set forth in subsection e of such section
 - Shall be subject to the rules applicable to those not lawfully present set forth in 1402(e) of the Affordable Care Act (42 U.S.C. 18071(e)); and
 - Shall be subject to the rules applicable to individuals not lawfully present set forth in 26 U.S.C. 5000A(d)(3)

Application Process (Sec. 2211(b), p. 153-155)

- An alien who meets the basic requirements above (including spouse and children) may apply for blue card status.

- DHS shall provide that aliens are able to apply if:
 - The alien is represented by an attorney, nonprofit, or similar organization recognized by the BIA or
 - To a QDE if the applicant consents to the forwarding of the application to DHS
- DHS may only accept applications for a 1-year period beginning the date on which the final rule is published. DHS may extend the application period another 18 months.
 - Exception: Provides that aliens who have participated in the H-2A program may apply from outside of the United States (but is unclear whether H-2As may only apply during that one-year period or may apply indefinitely).
- The application form shall collect such information as DHS determines “necessary and appropriate”
- DHS may (but is not required to) interview blue card applicants

Protection of Illegal Aliens During the Application Process (Sec. 2211(b), p.156)

- Aliens who have not applied
 - If an alien is apprehended –by any law enforcement agency – between enactment and the end of the application period and “appears prima facie eligible” for blue card status, DHS:
 - Shall give the alien an opportunity to file an application, and
 - May not remove the individual until a “final administrative determination” is made on the application
- Aliens in removal proceedings
 - If DHS determines between enactment and end of the application period that an alien in removal proceedings is “prima facie eligible”:
 - DHS shall give the alien an opportunity to apply, and
 - EOIR shall terminate the removal proceeding without prejudice and provide the alien a reasonable opportunity to apply
 - If EOIR determines that an alien, during the application period, is in removal proceedings and is “prima facie eligible”:
 - EOIR shall notify DHS, and
 - If DHS does not dispute the determination within 7 days, upon consent of the alien, EOIR shall:
 - Terminate the removal proceedings without prejudice
 - Give the alien an opportunity to apply
- Aliens ordered removed
 - An alien who meets the eligibility requirements, is in the U.S., and has been ordered removed (including voluntary departure):
 - May apply for blue card status

- Shall (upon receiving blue card status) file a motion to reopen the removal order, which shall be granted unless EOIR/DHS establishes by clear and convincing evidence that one or more grounds of ineligibility apply.
- Aliens Who Have Applied for Blue Card Status (p.161)
 - Between the time an alien applies and the date on which DHS makes a “final decision,” the alien
 - May receive advance parole to re-enter the U.S. if urgent humanitarian circumstances compel such travel;
 - May not be detained or removed – for any reason – unless DHS makes a prima facie determination that the alien is or has become ineligible for blue card status;
 - Shall not be considered unlawfully present for purposes of the 3 and 10 year bars; and
 - Shall not be considered an “unauthorized alien” for purposes of illegal employment.
 - After application, as soon as practicable, DHS shall provide each applicant with a document (shield) evidencing the filing of an application.

Protection of Employers (Sec. 2211(b)(6)(D)(iii), p.162)

- An employer who knows an alien employee is a blue card applicant (or will apply once the application period begins) is not violating the law against employing illegal aliens pending the adjudication of the application.
- Employment records by an alien or by an alien’s employer in support of an alien’s blue card application may not be used in a civil or criminal prosecution of that employer under the INA or the tax code for the prior unlawful employment of that alien, regardless of outcome of the application.
- Employers that provide illegal aliens with copies of employment records or other evidence of employment pursuant to an application for blue card status shall not be subject to civil and criminal liability for employing such illegal workers.

Adjudication of Blue Card Applications (Sec. 2211(b)(10), p. 166-168)

- DHS shall deny an application by an alien who fails to submit
 - Requested initial evidence, including biometric data, and
 - Any requested additional evidence by the date required by DHS
- An alien whose application is denied for insufficient information may file an amended application if
 - The application is filed within the application period; and
 - Contains all the required information and fees missing from the initial application

- DHS shall issue documentary evidence of blue card status to each alien whose application is approved. Such documentation:
 - Shall be machine-readable, tamper-resistant, and contain a digitized photograph
 - Shall, during the alien’s authorized period of admission, serve as a valid travel and entry document for purposes of admission
 - May be accepted, while valid, by an employer as employment authorization and identity
 - Shall include other features as DHS requires.

Revocation of Blue Card Status (Sec. 2211(c)(2), p.170-172)

- DHS may (but is not required to) revoke blue card status at any time AFTER: (1) providing “appropriate notice” to the alien, and (2) the exhaustion or waiver of all “applicable administrative review procedures” IF the alien:
 - Is no longer eligible;
 - Knowingly used blue card documentation for unlawful or fraudulent purposes; or
 - Was absent from the U.S for 180 days (in a single period or in the aggregate during any calendar year).
- DHS may require the alien to submit additional evidence or appear for an interview. If an alien does not comply, DHS shall revoke blue card status unless the alien demonstrates that such failure was “reasonably excusable”
- If DHS revokes an alien’s blue card status, any DHS documentation shall be automatically invalid for any purpose except departure
- DHS may adjust the status of an alien who has been granted blue card status to RPI status if DHS determines that the alien is “unable” to fulfill the agricultural service requirement (p.173)

Record of Employment (p.174)

- Each employer of a blue card status alien shall annually provide:
 - A written record of employment to the alien; and
 - A copy of such record to the Secretary of Agriculture.
- If DHS finds, after notice and opportunity for a hearing, that an employer of a blue card alien knowingly failed to provide the employment record required or has provided a false statement of material fact in such record, the employer shall be subject to a civil penalty of up to \$500. Such penalty shall be deposited into the CIR trust fund.
- Not later than 1 year after enactment, DHS shall issue final regulations to implement the Agricultural Worker Program

Adjustment to LPR Status (Sec. 2212, p.175)

- Blue card aliens may only apply for LPR status (green cards) under this section, the provisions relating to RPI adjustment, or the Merit-Based Track Two system created in Section 2302.
- Not earlier than 5 years after enactment, DHS “shall” adjust the status of a blue card alien to LPR status if:
 - During the 8 year period beginning with enactment, the alien performed not less than 100 work days of agricultural employment during each of 5 years; OR
 - During the 5 year period beginning with enactment, the alien performed not less than 150 work days of agricultural employment during each of 3 years. (p.175-176)
 - The alien applies before his blue card status expires (p.177)
 - The alien pays a \$400 fine, which shall be deposited into the CIR trust fund (p.178)
- An alien may demonstrate compliance with the work requirement by submitting:
 - Employer-provided records;
 - Documentation under (e)(5)[drafting error?]; or
 - Any other documentation DHS designates. (p.176)
- DHS may credit the alien with up to 12 months of agricultural employment if the alien was unable to work in agriculture due to:
 - Pregnancy, disabling injury, or disease that the alien can establish through medical records; (p.176)
 - Illness, disease, or other special needs of a child that the alien can establish through medical records; (p.177)
 - Severe weather conditions; (p.177)
 - Termination from agricultural employment if DHS determines that:
 - The termination was without just cause
 - The alien was unable to find alternative employment after a reasonable search. (p.177)
 - A DHS determination regarding termination of employment shall not be conclusive, binding or admissible in a separate or subsequent judicial or administrative action between the alien and employer (p.177)
- DHS may not adjust a blue card alien to LPR status if the alien:
 - Is no longer eligible for blue card status
 - Failed to perform the employment requirement (p.178)
- Grounds of inadmissibility under INA 212(a) that were previously waived or made inapplicable shall not apply with respect to adjustment to LPR status
- If DHS notifies the alien that it intends to revoke blue card status, DHS may not adjust to LPR status (p.178-179)

- A blue card alien may not file for adjustment to LPR status unless the applicant has satisfied “all federal income taxes assessed in accordance with 26 U.S.C. 6203. An alien may demonstrate compliance by submitting such documentation as DHS may require by regulation. (p.179)
- DHS shall grant LPR status to the spouse or child of a blue card alien who has adjusted to LPR status if:
 - The spouse or child applies for such status;
 - The principal alien includes the spouse and children in an application for adjustment to LPR status; and
 - The spouse or child is not ineligible for such status under the RPI provisions. (p.180)
- Numerical caps for green cards shall not apply to blue card aliens receiving LPR status
- DHS may interview blue card aliens applying for LPR status
- Blue card aliens applying for LPR status shall pay a processing fee that recovers the full cost of adjudicating applications (p.181)
 - DHS may limit fees paid by families and aliens under 21, and may exempt individuals and defined classes
 - Fees shall be deposited into the CIR trust fund (p.181-182)

Demonstrating Work History (Sec. 2212(e)(4), p.182)

- Aliens applying for blue card status or subsequently for LPR status shall provide evidence demonstrating the required work history (p.182)
- If an employer of a blue card alien has kept proper records regarding employment, the alien’s burden of proof may be met by securing timely production of such records
- An alien may meet the burden of proof to establish work history by providing sufficient evidence to show the extent of that employment “as a matter of just and reasonable inference (p.183)

Adjudication of Applications (Sec. 2212(f) and (g), p.183-184)

- Any person who files a blue card application or subsequently LPR status and “knowingly and willfully” makes false or fraudulent statements or supplies a false documents shall be fined in accordance with Title 18 (criminal code) and imprisoned up to 5 years (p.185)
- An alien who is convicted of such crime shall be deemed inadmissible under INA 212(a)(6)(C)(i)
- Section 504(a)(11) of the Commerce, Justice, State, Judiciary and Related Agencies Appropriations Act of 1996 (PL 104-134) may not be construed to prevent Legal Services from providing assistance directly related to blue card applications or applications for LPR status.

- Aliens applying for blue cards or LPR status shall be entitled to administrative and judicial review under the provisions for RPI aliens

Amnesty for Social Security Fraud (Sec. 2221, p.185-186)

- Amends Title 42 to exempt aliens with blue card status from most social security-related crimes.
- Provides that aliens with blue card status shall NOT be subject to prosecution for:
 - Willfully and knowingly submitting false information, with intent to conceal his identity or the identity of another, to the Social Security Administration for the purpose of establishing and keeping records;
 - For the purpose of increasing payments, causing payments when none are authorized, or obtaining a payment to which the individual is not entitled, or receiving anything of value:
 - Uses a SSN obtained on the basis of false information;
 - Falsely represents that a SSN is lawfully his
 - Knowingly alters a social security card or buys/sells social security cards