

IMMIGRATION REFORM AND THE IMPLICATIONS FOR CHILDREN

An Analysis of the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013

April 2013

On April 17, 2013 the bipartisan Senate “Gang of 8” introduced the Border Security, Economic Opportunity and Immigration Modernization Act of 2013 (S.744). Children of immigrants, who now comprise 25 percent of the U.S. child population, have a lot at stake in the overhaul of the U.S. immigration system. Thus, it is critical that immigration reform addresses the specific needs and interests of children. This fact sheet provides a summary and analysis of key provisions of the Senate immigration reform proposal that impact kids and families.

THE DREAM ACT

S.744 provides DREAMers with an expedited five year path to citizenship. In order to qualify for the DREAM Act, individuals must have been in registered provisional immigration (RPI) status for at least 5 years; entered the U.S. before age 16; graduated from high school or earned a GED; and acquired a higher education degree, completed two years at an institution of higher education, or completed four years of military service. DREAM-eligible youth would apply for RPI status through the standard application process and after 5 years, would be eligible to apply for Legal Permanent Resident (LPR) status and then be immediately eligible for citizenship. Other components of the DREAM pathway include:

- No upper-age cap for those who apply under this provision, enabling DREAMers who entered as children to access an expedited path to citizenship regardless of their current age
- Discretion for the Department Homeland Security (DHS) secretary to establish streamlined procedures for individuals who have received Deferred Action for Childhood Arrivals (DACA)
- A hardship exception for those who meet the principal requirements of the DREAM provision but are unable to meet higher education or military requirements
- Exemption from penalties
- Repeal of Section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, thereby allowing states the right to determine in-state tuition eligibility for undocumented students, without facing a penalty

It is important to note that under S.744 DREAMers will remain ineligible for all forms of federal financial aid, including student loans and federal work study. However, the DREAM provisions in S.744 are significantly more inclusive than previous versions of the bill and could provide qualified individuals with an expedited pathway to citizenship and improved access to higher education.

REGISTERED PROVISIONAL IMMIGRANT STATUS FOR CHILDREN & YOUTH

S.744 also provides derivative eligibility for RPI status for a dependent child if the child was present in the U.S. as of December 30, 2012 and their parent applies for RPI status. Children remain eligible if their parent is denied RPI status or if the parent-child relationship is terminated. Children under age 16 are exempt from paying fees or penalties to apply for RPI status, while youth under age 21 are also exempt from penalties for RPI and LPR status.

It is important to note that children in elementary school who are too young to meet the high school or GED requirement under the DREAM Act must follow the standard RPI path to LPR status and citizenship. As a result, young children could face a waiting period of up to 13 years before they become citizens.

WAIVERS FOR CERTAIN FAMILY MEMBERS AND YOUTH OUTSIDE THE U.S.

Individuals who departed the U.S. as a result of being subject to an order of exclusion, deportation, removal or voluntary departure, and remain outside the U.S. or reentered unlawfully after December 31, 2011 would not be eligible to apply for RPI status. However, the DHS Secretary will have discretion to waive this ineligibility for the following individuals:

- A spouse, parent, or child of a U.S. citizen or LPR
- Certain DREAM-eligible youth who entered under the age of 16 and have obtained a high school diploma or GED
- Individuals who entered the country prior to the age of 16, are at least 16 at the time of applying for RPI, and were physically present for a total of three years during the six-month period prior to the date of the enactment of the legislation

This limited waiver provides an important opportunity for certain removed parents and DREAM-eligible youth to return to the U.S. to reunite with family members.

POLICIES REGARDING DETAINED AND REMOVED PARENTS INVOLVED WITH THE CHILD WELFARE SYSTEM

Several important modifications impacting upon state child welfare plans are proposed in the bill to promote the reunification of detained or removed parents with their children in the child welfare system. Specifically, the bill provides states with the authority to consider a parent's detention or removal as a compelling reason to delay filing for termination of parental rights (TPR) and requires state child welfare agencies to meet certain conditions before filing for TPR in such cases. The bill also includes provisions to ensure that state child welfare agencies place children with relatives whenever appropriate, regardless of immigration status and that parents are provided assistance in making arrangements for their child prior to a parent's removal.

CHANGES TO THE FAMILY IMMIGRATION SYSTEM

The bill includes several modifications to the family immigration system which impact family reunification, including the elimination of certain categories while the lifting of visa caps on others. Specifically, S.744 does the following:

- Eliminates family-based visas for siblings of U.S. citizens
- Creates an age cap of 31 for married sons and daughters of U.S. citizens
- Permits parents of U.S. citizens who immigrate to bring their minor children with them
- Creates a "merit-based system" with two tracks. The first track awards points for factors such as education, length of employment, type of employment, family members in the U.S., and length of residence in the U.S. The second track creates a process for eliminating the backlog of family-based and employment-based visas within eight years, and it provides visas for immigrants who have been waiting for a visa for at least 5 years as well as those who have been lawfully present for at least 10 years.

CHANGES IN IMMIGRATION LAW SPECIFIC TO CHILDREN

The bill includes important changes to immigration law to take into account the potential impact on children in decisions regarding removal, deportation, or exclusion as well as waivers of inadmissibility. Specifically the bill:

- Provides immigration judges discretion to decline to order an immigrant removed, deported, or excluded and to terminate proceedings if it is determined that such action would result in hardship to the immigrant's U.S. citizen or LPR parent, spouse, or child

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- Provides the Secretary of Homeland Security the discretion to waive certain grounds of inadmissibility in cases that would result in hardship to a U.S. citizen or LPR parent, spouse, or child. The bill also waives the 3/10 year unlawful presence bars for immigrants with approved H1-B visas who entered the U.S. prior to the age of 16 and hold a U.S. bachelor's degree and extends the 3/10 year waivers of inadmissibility to those who can demonstrate hardship (no longer "extreme") to a U.S. citizen or LPR child
- Ensures that unlawful presence accrued under the age of 18 as well as false claims to U.S. citizenship as a minor do not result in bars of inadmissibility

These changes have the potential to significantly reduce the instances of family separation in immigration proceedings and improve circumstances for undocumented children growing up in the U.S.

ACCESS TO HEALTH CARE AND PUBLIC BENEFITS FOR CHILDREN AND FAMILIES

Under the Senate proposal, individuals, including children, who are granted RPI status, will not be eligible for the following federal means-tested public benefits during the time they are in provisional status:

- Non-emergency Medicaid
- Children's Health Insurance Program (CHIP)
- Supplemental Nutrition Assistance Program (SNAP)
- Temporary Assistance for Needy Families (TANF)
- Supplemental Security Income (SSI)

When most individuals in RPI status, including children, transition to LPR status, they will have to wait an additional five years, as the five-year bar will remain in place, and time in provisional status does not count towards the five year bar. As a result, young children could wait as long as 15 years to qualify for critical safety net programs.

PROVISIONS RELATED TO UNACCOMPANIED CHILDREN

S.744 includes important protections for unaccompanied minors, those vulnerable children who enter the U.S. alone in search of refuge, safety, or reunification with family members. Specifically, the bill includes the following requirements:

- Mandates training for Customs and Border Patrol in coordination with the Department of Justice Office of Civil Rights on issues such as screening and vulnerable populations, including children
- Requires the Attorney General to appoint counsel for unaccompanied minors at the expense of the government