

NYIC IMMIGRATION NEWS

An update by The New York Immigration Coalition on issues affecting immigrants and their communities.

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IMMIGRATION

Landmark Bipartisan Immigration Bill Introduced

On May 12th, immigrant leaders welcomed the introduction of an immigration reform bill by Senators John McCain (R-AZ) and Edward Kennedy (D-MA) and Representatives Jim Kolbe (R-AZ), Jeff Flake (R-AZ), and Luis Gutierrez (D-IL). The Secure America and Orderly Immigration Act (S.1033/H.R.2330) presents an historic opportunity to fix a broken immigration system by providing currently undocumented workers and students a path to permanent residence and citizenship, increasing the number of future workers who can legally enter the U.S. each year, and promoting family unity.

The bill's legalization provisions would allow undocumented immigrants already in the U.S. to get an H-5B temporary visa, valid for six years. Applicants would have to show work history or meet educational requirements and pay a \$1,000 fine plus fees. Spouses and children also would be eligible. To qualify for permanent residence, H-5B visa holders would have to complete the work or education requirements, meet English and civics requirements, and pay back taxes and another \$1,000 fine in addition to application fees.

The essential worker visa provisions would create a new H-5A temporary visa to allow foreign workers to enter and fill available jobs that require few or no skills. Initially, 400,000 H-5A visas would be made available. Applicants would have to show they have a job waiting in the U.S. and pay a \$500 fee plus application fees. H-5A status would be valid for three years and renewable once for a total of six years. H-5A workers could be sponsored for a green card by their employers or, after accumulating four years of work in H-5A status, could apply to adjust to permanent resident status on their own.

In addition, family unity and backlog reduction provisions would allow more family- and employment-based visas. Income requirements for sponsoring a family member for a green card would be lowered from 125% of federal poverty guidelines to 100%. The bill also would support English language and civics education and citizenship promotion.

Advocates do have concerns about whether worker rights and civil rights would be adequately protected, and they hope to work with lawmakers to improve the bill. In the coming months, groups will lobby the New York Congressional delegation to support and strengthen the reform proposal and will work to build broad public support for the bill's passage. For more information, visit www.thenyic.org or contact Avidah at ext. 244.

After Bitter Fight, REAL ID Act Becomes Law

On May 11th, President Bush signed into law a military spending bill that included the REAL ID Act – the most egregious legislative assault on immigrants' rights in almost a decade. Unfortunately, REAL ID's punitive driver's license and immigration provisions are "junk" security measures that only scapegoat immigrants and drive them further underground.

REAL ID sets federal standards on the issuance of drivers' licenses and ID cards. Applicants must prove lawful immigration status in order to obtain a driver's license or ID card. License and ID expiration dates for nonimmigrants and certain others must be tied to the person's period of authorized stay. States must verify every document submitted by the applicant with the issuing agency. Licenses and IDs issued by states that do not comply with REAL ID within three years will not be accepted as proof of identity by federal agencies.

The federal standards create enormous burdens for state motor vehicle departments and will make it harder for everyone to obtain a driver's license. But states could choose not to comply. Some, like New Mexico, are considering alternative approaches to complying, while others may try to challenge REAL ID in court.

Other REAL ID provisions raise the burden of proof for asylum seekers, strip federal courts of the right to review many cases involving individuals who are detained and/or facing deportation, and waive all laws necessary for building border barriers.

Unfortunately, New York's Senators Clinton and Schumer were both missing in action – neither spoke out against REAL ID when it was debated on the Senate floor and in conference committee. Only after it was included in the final appropriations bill – and awaiting President Bush's inevitable signature – did Senator Clinton make a statement expressing limited criticism of some of the provisions.

REAL ID's passage raises the stakes and highlights the need for legalization and comprehensive immigration reform. A new bipartisan immigration reform bill in Congress gives New York's senators and representatives an excellent opportunity to fight for a real solution that, unlike the REAL ID Act, benefits our nation's economy and security while respecting long-standing American values of fairness and opportunity. For more information, contact Jackie V. at ext. 239.

Anti-Immigrant House Members Go at It Again

A flurry of anti-immigrant proposals has come out of the House recently, courtesy of Rep. Sensenbrenner (R-WI) and his allies. On May 11th, the House passed an

anti-gang bill (H.R. 1279) that expands the definition of “crimes of violence” to include acts such as driving under the influence. Crimes of violence are treated as “aggravated felonies” for immigration purposes and carry extremely harsh immigration consequences. H.R. 1279 also requires that all immigration status violators – including simple overstays – be entered into the National Crime Information Center (NCIC) database, which is routinely checked by police across the country.

Last week, the House also passed the DHS Authorization Bill (H.R. 1817), which authorizes \$40 million for state and local police who enter into agreements with U.S. Immigration and Customs Enforcement to enforce immigration laws. H.R. 1817 also includes an amendment from Rep. Norwood (R-GA) that declares that state and local police have inherent authority to enforce immigration laws.

These amendments are a rehash of Rep. Norwood’s notorious CLEAR Act of 2003, which had failed to win support. Advocates should stay alert for the possibility that any of these amendments could be attached to legislation moving through the Senate. For more information, contact Norman at ext. 235.

DRIVERS’ LICENSES

Court Orders DMV to Stop Requiring Immigration Status, But Immigrants’ Licenses Still in Limbo

On May 9th, the New York State Supreme Court granted a preliminary injunction in *Cubas v. Martinez* ordering the New York State Department of Motor Vehicles (DMV) to stop requiring proof of immigration status for drivers’ licenses. The order will not bring relief to immigrants anytime soon, however, because the state plans to appeal, and the order will not go into effect until the appeal process is over.

In its decision, the court ruled that DMV likely acted outside statutory authority and violated state rulemaking procedures in making legal presence a requirement: “DMV cannot be an enforcer for the DHS. It simply lacks the expertise and, more importantly, it has not been empowered by the state legislature to carry out that function.” The lawsuit was brought on behalf of immigrants fighting to keep their licenses by the Puerto Rican Legal Defense and Education Fund (PRLDEF).

Nonetheless, while the DMV case winds its way through the courts, it is NOT advisable for immigrants who do not meet DMV’s immigration status requirements (authorized presence of one year or more with at least six months remaining) to go to DMV offices to attempt to renew or apply for licenses. Immigrants without proof of status who go to DMV offices risk having their licenses seized and being arrested and deported. Immigrants without proof of status who have received a letter from DMV asking them to verify their Social Security numbers may still drive legally but may

not be able to renew their licenses when they expire. PRLDEF has predicted that DMV probably will not go forward with suspending licenses this year while the court case is pending.

Long-term prospects for restoring immigrants’ access to drivers’ licenses took a turn for the worse, however, with the passage of the REAL ID Act (see article). But REAL ID does not go into effect for three years, and the state could choose not to comply. In the meantime, the NYIC will continue to fight for immigrants’ access to licenses. PRLDEF has set up a 24-hour recorded message with updates on the DMV case: 212-739-7584 (English) and 212-739-7495 (Spanish). For more information, call Jackie V. at ext. 239.

HEALTH CARE ACCESS

Medicare Issues Final Rules on Section 1011 Reimbursement for Immigrant Care

On May 9th, the federal Center for Medicare and Medicaid Services (CMS) issued final rules to disburse \$1 billion in funding over four years to hospitals under section 1011 of the 2003 Medicare Modernization Act. The funding is intended to partially offset the cost of providing emergency care to certain undocumented immigrants. Hospitals in New York State would compete for a mere \$12 million per year. While CMS’s final rule explicitly directs hospitals not to ask patients if they are undocumented, it still requires hospitals to collect and maintain some sensitive patient information in order to determine if the provider is eligible for reimbursement. The NYIC strongly discourages all hospitals in New York State from submitting claims for section 1011 reimbursement, but emphasizes that everyone, including undocumented immigrants, has the right to receive emergency medical care in hospitals, and that there are no immigration consequences to using medical care. For a policy update on section 1011, go to www.thenyic.org/templates/documentFinder.asp?did=425. For more information, contact Adam at ext. 222.



ACTIONS YOU CAN TAKE RIGHT NOW TO HELP PROTECT IMMIGRANTS’ RIGHTS

1. **Call Senators Schumer and Clinton and your House representative and urge them to support the McCain/Kennedy immigration reform bill (S.1033/H.R.2330)!** Capitol switchboard: 202-224-3121. Bill summaries and materials are at www.thenyic.org under Immigration Law.
2. **Check out what you can do to support funding for city services!** Visit www.thenyic.org and go to Action Alerts.

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