

Immigration Reform



August 2013



Current State of Reform

- *“Border Security, Economic Opportunity, and Immigration Modernization Act” (S. 744)*
 - S.744 was passed by Senate on June 27, 2013
- House: *The SAFE Act – Strengthen and Fortify Enforcement Act (H.R. 2278) and Agricultural Guestworker Act (H.R. 1773)*
 - Enforcement and temporary worker program, no path to citizenship



Components of Immigration Reform

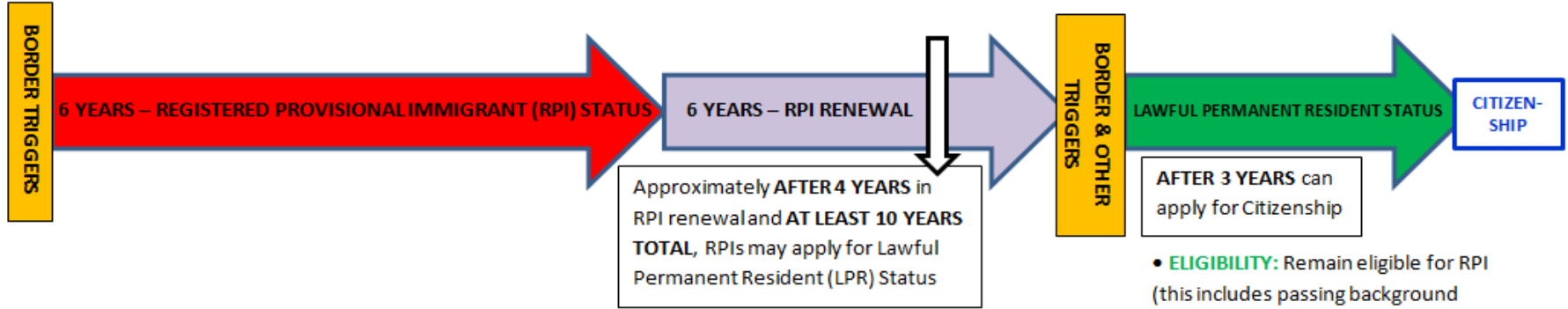
- Path to Citizenship
- Future Flow: Family reunification, Guest worker program
- Enforcement: Border security, E-Verify, Detention/Deportation



Review of Senate Bill S.744

Path to Citizenship

Path to Citizenship



- **CONTINUOUS PRESENCE:** Principal must be in the U.S. since 12/31/2011; Spouse or child must be in the U.S. since 12/31/12
- **APPLY WITHIN TIMEFRAME PERMITTED:** 1 year, possibly 2 ½ years
- **FINE:** required to pay \$1,000 penalty before RPI status can be renewed (may be paid in installments)
- **FEE:** Application Fee
- **TAXES:** Satisfy any applicable Federal tax liability
- **PASS BACKGROUND CHECK:** Biographic and biometric data
- **CERTAIN CRIMES & GROUNDS OF INADMISSIBILITY MAY BAR APPLICANT:** Conviction for a felony, aggravated felony, 3 or more misdemeanors, certain foreign offenses, or unlawful voting; and drug related offenses, crimes involving moral turpitude (CIMTs), etc., *unless waived or exceptions apply*
- **IN-PERSON INTERVIEW:** May be required

Certain deportees may apply for RPI status if qualify for a waiver

RPI status may be revoked if person takes a trip longer than 180 days outside the U.S. or is absent from the US for more than 180 days in the aggregate during any calendar year.

- **FEE:** Application Fee
- **TAXES:** Satisfy any applicable Federal tax liability
- **PASS another BACKGROUND CHECK:** Continue to meet RPI requirements (includes not triggering any of the bars)
- **EMPLOYMENT AND/OR EDUCATION:** Regularly employed and not likely to be a public charge, *or* average income not less than 100% of the poverty level, *or* full-time attendance in high school program (or its equivalent), literacy program, vocational training, or higher education (*unless waived or meet exceptions*)
- **LIMITED TRAVEL:** Generally, no more than 180 days in any one calendar year

AFTER 3 YEARS can apply for Citizenship

- **ELIGIBILITY:** Remain eligible for RPI (this includes passing background check and not triggering the bars)
- **FEE/FINE:** Application Fee + \$1000 Penalty (may be paid in installments)
- **TAXES:** Satisfy any applicable Federal tax liability
- **REGISTER WITH THE SELECTIVE SERVICE** (Men only)
- **LEARN ENGLISH & CIVICS:** Either by examination or pursuing a class (*exceptions based on disability & age*)
- **EMPLOYMENT AND/OR EDUCATION:** Regularly employed and not likely to be a public charge, *or* average income was not less than 125% of the poverty level, *or* full-time attendance in high school program (or its equivalent), literacy program, vocational training, or higher education (*unless waived or meet exceptions*)
- **ABSENCES:** Not continuously absent for more than 180 days in any calendar year as an RPI
- **INTERVIEW:** May be required



RPI Status

Eligibility Requirements for RPI Status:

- Must show physical presence in the US on or before 12/31/11
- Must show continuous presence in the U.S. since 12/31/11 until granted RPI
 - Brief, casual, and innocent absences are OK
 - Derivatives (spouse & children) must show presence & continuous presence since 12/31/12
- Pass background checks
- Satisfy any applicable Federal tax liability
- Pay \$1000 penalty before renewal of RPI status + application fee



RPI Status Continued

Bars to obtaining RPI Status:

- Has a conviction for: a felony, an aggravated felony, 3 or more misdemeanors, unlawful voting, and a foreign offense (certain exceptions apply)
- Is inadmissible under 212(a) [unless waived or meet exceptions]
- Reasonable grounds to believe is engaged or is likely to engage in terrorist activity
- On April 16, 2013 was:
 - An LPR
 - A refugee or asylee
 - Lawfully present in the US in nonimmigrant status



What does RPI status confer?

- Admitted into lawful status, valid for 6 years
 - Will not be a nonimmigrant status
- Lawful work permit
- Valid SSN
- Ability to travel outside the US (certain restrictions apply)



RPI Renewal

Requirements:

- Remains eligible for RPI status & status has not been revoked
- Employment Requirement:
 - Regularly employed (no brief periods > 60 days) AND not likely to become a public charge; OR
 - Average RPI income was not less than 100% of the Federal poverty level; OR
 - Attended school full time.
 - *Unless meet exceptions due to age, disability, family, temporary reasons, etc. OR are granted a Hardship Waiver*
- Satisfied any applicable Federal tax liability
- Pass another background check
- Payment of penalty before renewal + Application fee

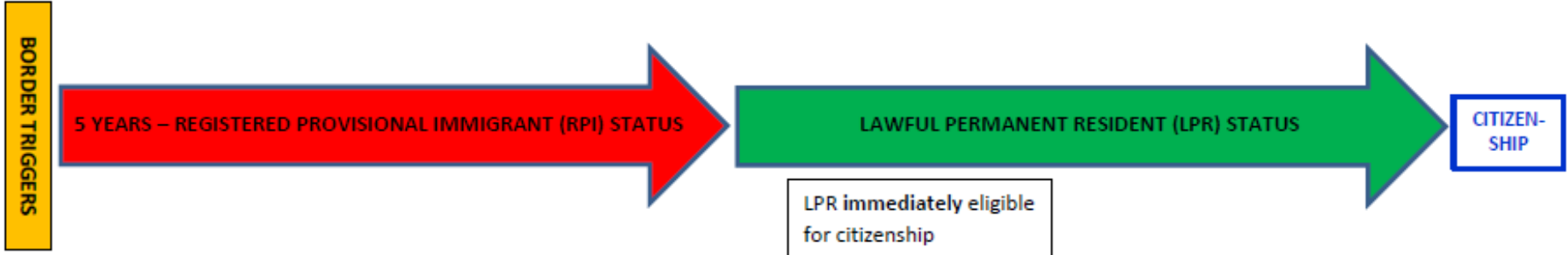


RPI Adjustment to LPR

Requirements:

- Granted and remains eligible for RPI status (this includes passing background check & not triggering bars)
- Was not continuously absent from US for more than 180 days in one year (unless show extenuating circumstances)
- Satisfied applicable tax liability
- Employment Requirements
- English/Civics: Pass naturalization test or pursue a class
- If required to do so, must show registered for the Selective Service
- Pay \$1,000 penalty + application fee

Path for DREAMers



- **CONTINUOUS PRESENCE:** Must be in the U.S. since 12/31/2011
- **FINE/FEE:** No Penalty + Application Fee
- **TAXES:** Satisfy any applicable Federal tax liability
- **PASS BACKGROUND CHECK:** Biographic and biometric data
- **CERTAIN CRIMES & GROUNDS OF INADMISSIBILITY MAY BAR APPLICANT:** Conviction for a felony, aggravated felony, 3 or more misdemeanors, certain foreign offenses, or unlawful voting; and drug related offenses, crimes involving moral turpitude (CIMTs), etc., *unless waived or exceptions apply*
- **IN-PERSON INTERVIEW:** May be required

Certain deportees may apply for RPI status if qualify for a waiver

Unless DHS determines that a DACA recipient has not engaged in conduct that would bar them from RPI status, DHS **may** grant RPI status to DACA recipients.

RPI status may be revoked if person takes a trip longer than 180 days outside the U.S. or is absent from the U.S. for more than 180 days in the aggregate during any calendar.

LPR immediately eligible for citizenship

- **STATUS & ENTRY:** Applicant was in RPI status for at least 5 years and was under age 16 when first entered the U.S.
- **FINE/FEE:** No Penalty + Application Fee
- **PASS *another* BACKGROUND CHECK**
- **KNOW ENGLISH & CIVICS**
- **HIGH SCHOOL EDUCATION:** Has obtained high school diploma, GED certificate or its equivalent
- **HIGHER EDUCATION OR MILITARY SERVICE:** Completed at least 2 years of higher education, received a higher education degree, *or* served at least 4 years in the Uniform Service (*unless applicant meets hardship exception*)

There **may** be a separate streamlined LPR adjustment process for DACA recipients.



DREAM Act

Requirement for RPI DREAMers to adjust to LPRs:

- RPI for at least 5 years
- Under 16 when initially entered the US
- High School diploma or its equivalent
- At least 2 years of higher education (or received a higher education degree) or served at least 4 years in the Uniform Service

- Once obtain LPR status, DREAMers are immediately eligible to naturalize

- There may be a streamlined adjustment process for RPI DACA recipients

Path for Agricultural Workers



- **EMPLOYMENT:** Performed at least 575 hours or 100 work days in agriculture during a 2-year period ending on 12/31/2012; Spouse or child must be in U.S. since 12/31/2012
- **FINE/FEE:** \$100 Penalty (for applicants over 21) + Application Fee
- **PASS BACKGROUND CHECK:** Biographic and biometric data
- **CERTAIN CRIMES & GROUNDS OF INADMISSIBILITY MAY BAR APPLICANT:** Conviction for a felony, aggravated felony, 3 or more misdemeanors, certain foreign offenses, or unlawful voting; and drug related offenses, crimes involving moral turpitude (CIMTs), etc., *unless waived or exceptions apply*
- **IN-PERSON INTERVIEW:** May be required

Blue Card status may be revoked if person takes a trip longer than 180 days outside the U.S. or for more than 180 days in the aggregate during any calendar year.

Employers of Blue Card status holders are required to provide them and the Secretary of Agriculture with an annual written report of employment.

- **ELIGIBILITY:** Remain eligible for blue card status (this includes not triggering the bars)
- **EMPLOYMENT:** During the 8-year period after enactment of the Act, performed least 100 days of agricultural work during each of 5 years, *or* during the 5-year period after enactment, performed at least 150 days of agricultural work during each of 3 years (*certain exceptions may apply*)
- **FINE/FEE:** \$400 Penalty + Application Fee
- **TAXES:** Satisfy any applicable Federal tax liability
- **APPLY:** Before blue card status expires
- **IN-PERSON INTERVIEW:** May be required

If a Blue Card status holder is unable to meet the work requirement to adjust to LPR status, DHS *may* adjust the person to RPI status.



Path for Agricultural Workers

- ***To qualify for “blue card” status applicant must:***
 - Have performed at least 575 hours or 100 work days of agricultural employment during a two-year period ending December 31, 2012
 - Pay a penalty and pass background checks
 - Meet certain admissibility requirements & not subject to criminal bars
- ***Agricultural Workers have a 10-year pathway to citizenship.***
 - Blue-card holders may apply for LPR status 5 years after enactment of the bill if they have continued to work in agriculture, paid their taxes, and pay a fine
 - Can apply for citizenship after 5 years as LPRs

Other Highlights...

- People apprehended after enactment and before end of application period will be given reasonable opportunity to apply if prima facie eligible & may not be removed
- DHS may conduct interviews
- People in removal proceedings given opportunity to apply
- Certain deportees who are abroad or who unlawfully reentered the US after 12/31/11 are ineligible unless:
 - Spouse, child, or parent of a USC or LPR
 - Or is a DREAMer that is 16 years or older when applying, was physically present in the US for an aggregate of at least 3 years during 6 year period immediately before enactment
 - May provide notice & consult victim if deportee was convicted of a crime
- DHS *may* grant DACA recipients RPI unless engaged in conduct since DACA approval that would make them ineligible for RPI



Other Changes:

- Increases conduct for which someone can be deported.
- Increases penalties and/or adds types of federal immigration crimes for which one can be prosecuted.
- Provides counsel to certain immigrants in removal proceedings (unaccompanied, minor children, individuals with mental disabilities, other particularly vulnerable individuals); more resources for immigration courts.



Review of Senate Bill S.744

Future Flow



Senate Bill

- Merit-based point system with two tracks that award immigrants with educational credentials, work experience, and other qualifications.
 - Will function alongside family-based immigration and employment-based immigration programs.
- Changes to family and employment immigration.
 - Eliminates some family categories including brothers and sisters of U.S. citizens.



Highlights: Changes to Worker Visas

- Raises the annual H-1B visa cap
- Creates a *W nonimmigrant visa* for less-skilled workers (includes agricultural and nonagricultural workers)
 - Supervised by new entity: Bureau of Immigration and Labor Market Research
 - Allows workers to leave jobs to work for other employers in program



Review of Senate Bill S.744

Enforcement

Border Triggers

Step 1: “Triggers” to be met before any undocumented immigrant may be processed for RPI status:

- Southern Border Security: DHS must submit to Congress a plan to maintain control of the southern border through surveillance in “high risk sectors” and to achieve a 90% effectiveness rate for high risk southern border sectors.
- Southern Border Fencing: Identify areas along the border where 700 miles of fencing, infrastructure, and technology should be deployed.
- DHS must send Congress notice that these plans have “commenced” before anyone can apply for RPI status.



Border Triggers

Step 2: Triggers to be met before most of those in RPI status (exception: DREAMers & Agricultural workers) may apply for a green card

- Substantial deployment and operationalization of the Comprehensive Southern Border Security Strategy.
- Implementation and substantial completion of the Southern Border Fencing Strategy.
- Implementation of mandatory employment verification (“E-Verify”) system.
- Implementation of an integrated electronic exit system.



Increased Border Resources

- **Appropriations:** \$4 billion to implement the border security strategy; \$8 billion for fencing strategy; and adds \$30 billion to fund the increase in the number of CBP agents.
- **Equipment & Technology:** Massive increase in equipment and technology available to CBP at the border, including additional mobile, video, department of defense radar equipment, unmanned aerial vehicles to provide 24-hour operation and surveillance.



Increased Border Resources

– **Agents, Officers, Stations:**

- Requires hiring and deploying at least 19,200 CBP officers and deployment of 160 CBP unmanned aircraft systems.

– **Deployment of the National Guard:**

- Authorizes the deployment of the National Guard to the southern border to construct fencing, including double-layer and triple-layer fencing, and to deploy aerial system and aircrafts.



E-Verify...Currently

- Internet-based system that allows businesses to determine eligibility of their employees to work in the US
 - Compares Form I-9 to U.S. government records
- System is not currently mandatory
 - Less than 1% of employers in the U.S. are enrolled in E-Verify



E-verify...Under the Senate Bill

- Expanded and mandatory for all employers over a period of 5 years
- Can ONLY be used for verification purposes, and NOT for discriminatory purposes
- Requires identity verification through the use of enhanced fraud-proof documents & photos
- Will take precedence over local and state laws related to the hiring of foreign nationals



E-Verify and Sanctions

- *Employers who knowingly hire, recruit, refer, or continue to employ an unauthorized immigrant or fail to comply with E-Verify requirements are subject to increased penalties.*
 1. Civil fines are increased up to \$25,000
 2. Criminal penalties include two years in prison + fines up to \$10,000
- Employers who comply with the system's requirements in good faith will not be penalized



Resources

- Alliance for Citizenship - <http://allianceforcitizenship.org/>
- CAMBIO - <http://cambio-us.org/>
- Immigrant Legal Resource Center – www.ilrc.org
- National Immigration Law Center – www.nilc.org