



Will Comprehensive Immigration Reform Happen?

By Kirk A. Carter, Esq.

Since November, nearly everyone has put immigration reform at the top of the list of things Congress could accomplish this year. The president has encouraged it, Republicans have softened their opposition, organized labor and the Chamber of Commerce are coming together, and a bipartisan group of key legislators is working behind the scenes to draft a bill that achieves comprehensive solutions built upon significant compromise. It's taken more than twenty-five years to get here, but here are the key issues to watch for when the bill is rolled out in the coming months:

BORDER SECURITY

Over the past decade resources allocated to border enforcement have increased exponentially, and interdiction and removal are now at record highs. While significant progress has been made in securing the border, the border will never be 100% secure, because the biggest draw is the potential to work here in the US. While US employers have been required to verify the employment eligibility of each new hire since 1987, the use of fraudulent documents has allowed many people to circumvent the rules. To combat this problem USCIS developed a program known as E-Verify, which allows employers to electronically verify the employment status of new workers through the USCIS database. All government contractors are required to utilize this system. Some states, such as Arizona require all employers to utilize it, and a growing number of employers are utilizing it nationwide. Look for all employers to be required to use E-Verify as a way to remove a substantial economic incentive to overstays and undocumented entrants.

PATHWAY TO CITIZENSHIP

While President Obama and the Democrats would prefer that the 11 million undocumented immigrants be provided a reasonable path to legalization and citizenship, Republicans refuse to reward those who broke the law and refuse to put them in line ahead of those who have played by the rules and are waiting patiently. The Democrats acknowledge this and have agreed to an unspecified waiting period – how long is the question. For example, the waiting list for siblings being sponsored by US citizens is 10-12 years! In the meantime, both sides agree that the undocumented should be given a status that allows them to remain in the US and work legally. In exchange for this status they will be expected to pay a fine; demonstrate that they can speak, read and write English; know a little about our history; and show that they have paid taxes on their prior earnings for some period of time.

There is likely to be a two-track system: a shorter track for “dreamers,” those younger immigrants (typically under 30) brought here before they were 14 by their parents; and a regular track for all others. The big areas of dispute are how long they remain in this “temporary” state and when they get to “activate” this status. Most Republicans don't want the pathway provisions to be activated until there is some certification that the border is “secure” – what the standards are for this and who makes that determination are unclear. I suspect that E-Verify will be a key component of that certification.

VISA AVAILABILITY

One of the reasons our system is broken is that it was designed in 1952, so it doesn't appropriately address the current economic needs of our nation. Despite economic changes over the past sixty years, the decline in birth rates and the increase in demand for workers with various skill sets, our immigration law relies upon an antiquated priority system that distributes too few visas in, some would say, a nonsensical manner. As a result, certain citizens have to wait up to 10 to 12 years to get a visa for their loved one. Companies that go through a complicated process to show that they can't find qualified US workers to perform a job here in the US often have to wait 8 years before they can get a green card for that employee. It's no wonder why people ignore the law and enter the country without papers when they are faced with separation from their loved one.

As part of immigration reform, look for the return of common sense in a few areas. There seems to be some consensus that the best and brightest who gain an advanced degree (particularly in engineering or the sciences) from one of our Colleges or Universities should not be forced to leave and should instead be offered a green card; that more H-1B visas should be made available for specialty workers, particularly in the technology sector; and that a guest worker visa should be available to Mexican nationals that allows them to come to the US to work for a period, particularly in the agricultural field, which would allow them to return home and would not put them on a path to citizenship.

While my crystal ball remains cloudy as to the full details of what Congress might ultimately pass, in my nearly twenty-five years of following this issue, I have never been more confident that we are approaching a resolution and that immigration reform will be enacted in 2013.

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