



**Budget Reconciliation**

**Summary of Title VI – Subtitle A – Immigration Provisions<sup>1</sup>**

**September 17, 2021**

*AILA Government Relations*

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<sup>1</sup> Available here: [https://judiciary.house.gov/uploadedfiles/judiciary\\_committee\\_print.pdf](https://judiciary.house.gov/uploadedfiles/judiciary_committee_print.pdf); Substitute amendment (Passed on 9/14)

## **Background:**

On September 10, the House Judiciary Committee released bill text on immigration provisions that will be included in the budget reconciliation package. Committee Chairman Nadler [substituted the full bill text with an amendment](#) that makes technical changes to the initial bill text affecting the recapturing of visas. On September 13, the Committee marked up the Chairman's substitute amendment of the full bill. However, this is not the final bill text as there will be a House floor vote and the Senate will have an opportunity to decide what stays or is added in the legislation.

## **Overview:**

### **Section 60001. Lawful Permanent Residence for Certain Entrants**

- Legalization language includes both documented and undocumented individuals who may apply for adjustment of status after payment of a supplemental fee of \$1,500, completion of a background check and medical examination.
- The main categories of qualifying individuals for legalization are Dreamers, Essential Workers, and holders of Temporary Protected Status (TPS) or recipients of Deferred Enforcement Departure (DED).
  - Text uses the [DHS CISA definition](#) for essential workers and includes farmworkers, among other individuals with a consistent record of earned income.
  - Each category has different eligibility and physical presence requirements.
  - Several inadmissibility grounds apply. There is a limited waiver available for some of the inadmissibility grounds based on humanitarian, family unity, or public interest purposes.
- Effective Date: 180 days after enactment or May 1, 2022, whichever is earlier.

### **Section 60002. Recapture of Unused Immigrant Visa Numbers**

- Recapture language fixes the [incinerator problem](#) and recaptures unused Employment Based (EB) and Family Based (FB) visas since FY 1992.
- Avoids double counting of visas.
- Preserves Diversity Visas (DV) that were not issued or used for admission since FY 2017 due to the Muslim/African bans and COVID processing delays/bans.

### **Section 60003. Adjustment of Status**

- Allows for filing of an AOS application for most FB and EB applicants upon the approval of the immigrant visa (IV) petition, does not require a visa number to be immediately

available, for a supplemental fee of \$1,500 for the principal applicant and \$250 for each derivative beneficiary.

- Thru September 30, 2031, creates an exemption from the annual and per-country FB and EB immigrant visa numerical limitations for individuals who have filed AOS applications, and their priority date is at least 2 years before the date of applying for a waiver of limitations, for a supplemental fee of:
  - \$2,500 supplemental fee for AOS applicants based on an approved I-130 for unmarried sons and daughters of USC, married sons and daughters of USCs, brothers and sisters of USC, immediate relatives]] and spouses and unmarried children of LPRs.
  - \$5,000 supplemental fee for AOS applicants based on an approved EB 1, 2 or 3 I-140 petition.
  - \$50,000 supplemental fee for AOS applicants based on approved EB-5 petition.

#### **Section 60004. Additional Supplemental Fees.**

- Establishes additional supplemental fees for immigrant visa petitions (in addition to filing fees, early adjustment fees, and waiver of numerical limitation fees)
  - \$100 for FB Iv petitions for unmarried sons and daughters of USC, married sons and daughters of USCs, and brothers and sisters of USC and immediate relatives.
  - \$100 for FB IV petition for spouses and unmarried children of LPRS.
  - \$800 for EB 1-3 petitions.
  - \$15,000 for EB-5 petitions.
- All supplemental fees will be deposited into the General Treasury fund.

#### **Section 60005. U.S. Citizenship and Immigration Services**

- Appropriates an additional \$2.8 billion to USCIS to efficiently adjudicate INA 245(n) applications.

#### **Detailed Section by Section:**

##### **Section 60001. LPR for certain entrants**

- Creates a new INA 245B
- Application process
  - Files an AOS application
  - Pays supplemental fee of \$1,500
  - Completes background and medical checks
- Eligible groups:
  - “Dreamer” Eligibility
    - Continuously physically present since 1/1/21

- Entered when 18 or younger
- Shows:
  - Honorable military service;
  - Completion of at least 2 years of a degree from US institution of higher ed or postsecondary credential from a career or tech school;
  - Consistent earned income for the 3 years immediately preceding application; or
  - Enrollment in college or career/tech school AND current employment in internship, apprenticeship, or similar training program
- Does not differentiate between documented and undocumented.
- Essential Workers
  - Has been continuously physically present since 1/1/21
  - Demonstrates consistent record of earned income in the U.S. in an essential occupation as defined by the [DHS CISA guidance](#) between 1/31/2020 – 8/24/21.
  - Does not differentiate between documented and undocumented.
- TPS
  - Continuously physically present for not less than 3 years
  - National or person who last habitually resided in a state that was designated for TPS on January 1, 2017
  - Has not engaged in conduct that would make them ineligible for TPS per INA 244(c)(2)
- DED
  - Continuously physically present for not less than 3 years
  - Eligible for DED as of 1/20/21
  - Has not engaged in conduct that would make them ineligible for DED
- Grounds of Ineligibility
  - Cannot be inadmissible under INA 212(a)
    - (2) (Criminal and Related grounds)
    - (3) (Security and related grounds)
    - (6)(E) (Smugglers)
    - (6)(G) (Student visa abusers)
    - (8) (ineligible for citizenship)
    - (10)(A) – (practicing polygamists)
    - (10)(C) – (international child abduction)
    - (10)(D) (unlawful voter)
  - Has not been involved with persecution of another based race, religion, nationality, membership in a particular social group, or political opinion;
  - Has not been convicted of
    - a federal or state crime (except related to immigration status) that is punishable by a maximum term of more than 1 year

- 3 or more federal or state offenses (except related to immigration status) for which the individual was convicted on different dates for each of the 3 offenses and imprisoned for an aggregate of 90 days or more
  - Has registered with the Selective Service, if applicable
  - May apply for a waiver of certain inadmissibility grounds (2), (6)(E), (6)(G) or (10)(D) for humanitarian or family unity or if in public interest.
  - Treatment of expunged convictions
    - May not automatically treat an expunged conviction as a conviction
    - Shall evaluate expunged convictions on a case by case basis
- Applicability to individuals in removal proceedings or with final order of removal or who voluntarily departed:
  - Individual may apply if requests an opportunity to apply or appears to be prima facie eligible for relief
  - Stay of removal for certain children applicants:
    - Not subject to inadmissibility and is enrolled in a preschool, elementary, secondary or GED program.
- Effective date
  - 180 days after enactment or May 1, 2022, whichever is earlier.

#### **Section 60002. Recapture of Unused Immigrant Visa Numbers**

- Revises INA 201(c)(1)(B)(ii) to ensure that visas do not go lost in the future, by clarifying that the available FB numbers is 226,000 + unused EB visas from prior fiscal year.
- Recaptures unused family-sponsored immigrant visas from FY 1992-2021.
- Recaptures unused employment-based immigrant visas from FY 1992-2021.
- Recaptures unused DV immigrant visas from FY 2017 – 2021 for individuals (and their spouse and children):
  - Whose visas were refused, prevented, or denied admission because of the Muslim or African travel bans; or
  - Because of restrictions or limitations on visa processing, visa issuance, travel or other effects of the COVID-19 health emergency, were unable to:
    - Get a visa interview despite submitting DS-260; or
    - Seek admission despite being approved for a visa under INA 203(c).

#### **Section 60003. Adjustment of Status**

- Adds section 245(n) – allows an individual (and his or her spouse or children) to file an adjustment of status application based on:
  - Approved petition under INA 204(a)(1)
  - Payment of a supplemental fee of \$1,500 for the principal, and \$250 for each derivative beneficiary.
  - Eligibility otherwise for adjustment.

- Waiver/Exemption from INA 201, 202, 203 (annual EB and FB and per country numerical) limitations for an adjustment applicant who is a:
  - Beneficiary of an approved petition under INA 204(a)(1)(A)(i) [unmarried sons and daughters of USC, Married sons and daughters of USCS, and Brothers and sisters of USC and immediate relatives]] or (B)(i)(I) (spouses and unmarried children of LPRs)
    - Priority date is more than 2 years before the request for a waiver of the numerical limitation is made; and
    - Pays supplemental fee of \$2,500
  - Beneficiary of an approved EB 1, 2 or 3 petition
    - Priority date is more than 2 years before the request for a waiver of the numerical limitation is made; and
    - Pays a supplemental fee of \$5,000
  - Beneficiary of an approved EB-5 petition
    - Priority date is more than 2 years before the request for a waiver of the numerical limitation is made; and
    - Pays a supplemental fee of \$50,000
- Effective Date: Takes effect 180 days after enactment or May 1, 2022, whichever is earlier. This section expires on September 30, 2031.
  - An individual who has requested the waiver and paid the fee prior to September 30, 2031, may still be adjusted after that date.

#### **Section 60004. Additional Supplemental Fees**

- Supplemental fees under INA 245(n) and the new supplemental petition fee will be deposited in the general Treasury fund.
- Supplemental petition fees:
  - Immigrant petition for unmarried sons and daughters of USC, married sons and daughters of USCs, and brothers and sisters of USC and immediate relatives will have a supplemental fee of \$100.
  - Immigrant petition for spouses and unmarried children of LPRs will have a supplemental fee of \$100.
  - EB 1-3 petitions will have supplemental fees of \$800
  - EB-5 petition will have a supplemental fee of \$15,000

#### **Section 60005. USCIS**

- Appropriates for FY 2022 an additional \$2.8 billion dollars, which will remain available until spent, for the purposes of “increasing the capacity of USCIS to efficiently adjudicate” legalization and adjustment applications under INA 245(n).