

Legalization Programs v. “Amnesty”

What is amnesty? Amnesty simply means a pardon or more generally forgiveness for anyone who has engaged in any wrong doing. For immigration purposes there is no such thing as an amnesty. There are limits and specific guidelines for who can apply and get a Green Card. This has always been the case and will most likely, always be the case. Instead of Amnesty, the United States Citizenship & Immigration Services (US CIS) creates “legalization” programs. Certain individuals are disqualified from legalization programs. Those who have been previously ordered deported by an Immigration Judge, have drug convictions, certain serious offenses whether misdemeanors or felonies, or those who have only lived a short time in the US may not qualify for any legalization program. A legalization program is different from the normal course of immigration. Normal immigration requires sponsorship, that is, an individual can obtain permanent residency in the US if s/he has entered the country with a visa and passport and that individual has a qualifying relative (a spouse, parent or child above 21) who is a United States citizen who has submitted a petition on behalf of that person.

There have been a few legalization programs in the past. In 1988 there was the Immigration Reform and Control Act (IRCA), which allowed individuals who had been in the United States since 1981 to apply for permanent residency status. In addition, there has been the implementation of a provision of the Immigration & Nationality Act (INA) Section 245(i) which allowed undocumented persons to apply for permanent residency status if they came to the United States without a visa and passport, only if they had a qualifying relative to sponsor them. Section 245(i) was made law again in December 2000 and lasted until April 2001 and was a part of a broader legalization program initiated by the Legal Immigration Family Equity Act known as LIFE. This legalization program was designed to help those people who had been living in the US since 1981 but who failed to get their residency during the IRCA legalization program because their applications were initially rejected by Immigration officials.

Currently, as of the writing of this article, there is NO legalization program although one is contemplated by the US Senate and called for by President Bush. In order for there to be a concrete legalization program both houses of Congress must agree on a reasonable method of legalization AND President Bush must sign the law into existence. Further, once the Law is enacted, then the US CIS must implement the program. This requires the US CIS to determine what forms they will require applicants to complete, the processing fee each applicant must pay, and the location where each application must be sent. The Office of Management and Budget determine these matters, which instruct the US CIS how to carry out the legalization program.

Presently, the US House of Representative has passed a bill which calls only for enforcement of the Immigration Laws. This bill proposes to criminalize agencies and individuals who assist certain immigrants. This proposal actively seeks to expel many illegal and/or undocumented individuals from the United States through an increase in the deportation of such individuals. This bill although it has passed the House of Representatives **IS NOT LAW**. It must be reconciled with the bill passed by the US Senate several weeks ago. The US Senate passed the Comprehensive Immigration Reform Act of 2006 (Senate Bill 2611 (S2611)) which is also known as The Hagel-Martinez Compromise. This bill is NOT LAW. It was sponsored by Senator Arlen Specter and co-sponsored by among others, Senators McCain, Kennedy, Martinez, Hagel and Brownback. This bill contains the basis for the much anticipated legalization program the public and many in the immigrant community desire. The Hagel-Martinez Compromise has provisions which would allow “earned legalization” for those individuals who are 20 years or older, who have continuously resided in the United States for at least five (5) years preceding the enactment of the law, who have worked for at least 3 of the last five years, have basic English literacy, and who have paid taxes or will pay taxes by the date of filing application. Those who have extenuating criminal issues, who entered the country as stowaways, are smugglers and who are practicing polygamists are **NOT** eligible to apply under any circumstances. In addition, there is a provision for agricultural workers and the orderly deportation of some immigrants who may be subject to mandatory detention. A copy of this proposed legalization program can be viewed at www.senate.gov under the heading of bills, resolutions and legislation.

It is important to note that everyone in the Immigrant community anticipates a legalization program as this is an election year and very important issue affect the national economy and local communities everywhere. If and when a legalization program is enacted, not everyone will be able to qualify. Some individuals who have previous orders of deportation, criminal convictions, and those with not enough time in this country may not be able to apply. If the normal course of immigration through a parent, child or spouse is not a viable option, then a legalization program may be the only avenue available. Until there is one, then we will all have to sit and listen to the debates and wait for our elected officials to act.

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