

We are saying this limit should be 650,000. Now, why did we choose that? Because that is what the Congressional Research Service says they estimated would actually be happening under Chairman SPECTER's proposed mark to the Judiciary Committee when they started. To do something other than what we are proposing in this amendment is to leave it totally unknown as to how many people we are going to have coming in under this employment-based legal permanent residency program, how many green cards we are going to be giving out. It could be 500,000. It could be 1 million. It could be 1.5 million. This is every year I am talking about. That is not an acceptable arrangement.

Now, I want to make clear this one point, which I said before; that is, this amendment in no way limits the number of people who can come in and become legal permanent residents under the family preference. That is 480,000. It does not affect the number of people who can have their situation, their status changed under the undocumented earned legalization provisions. That is 11 or 12 million. It is left alone. It does not affect the 1.5 million blue card agricultural workers. It does not affect the shortage occupation groups and other high-skilled workers. It does not affect the 141,000 visas that we are bringing back from the last 5 years.

This amendment will improve the bill. It is not an effort to undermine the bill. It is an effort to improve the bill. I urge my colleagues to support the amendment.

The PRESIDING OFFICER. All time has expired.

Mr. SPECTER. Mr. President, I ask unanimous consent that the Feingold amendment and debate precede the Sessions amendment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. SPECTER. Mr. President, so that our colleagues will know the schedule, Senator BYRD has asked to speak to the body following this vote on his 69th wedding anniversary. He will be recognized for that purpose.

I yield the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I thank the distinguished Senator. I want to do that at a time that will accommodate him and the Senate. So if the Senator would let me know right now, if he might, when might be the best time to accommodate him and the Senate.

Mr. SPECTER. Mr. President, I thank the distinguished Senator from West Virginia. We will see if we can find a more convenient time.

Mr. BYRD. I thank the Senator.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the Bingaman amendment.

Mr. SANTORUM. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The bill clerk called the roll.

Mr. McCONNELL. The following Senator was necessarily absent: the Senator from Wyoming (Mr. ENZI).

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. ROCKEFELLER) is necessarily absent.

The PRESIDING OFFICER (Mr. GRAHAM). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 51, nays 47, as follows:

[Rollcall Vote No. 152 Leg.]

YEAS—51

Alexander	Cornyn	Lincoln
Allard	Craig	Lott
Allen	Crapo	Mikulski
Baucus	DeMint	Nelson (FL)
Bayh	Dodd	Nelson (NE)
Biden	Dole	Pryor
Bingaman	Domenici	Reed
Bond	Dorgan	Roberts
Boxer	Ensign	Santorum
Bunning	Feinstein	Sessions
Burr	Grassley	Shelby
Byrd	Hutchison	Sununu
Carper	Inhofe	Talent
Chambless	Isakson	Thomas
Coburn	Jeffords	Thune
Cochran	Johnson	Vitter
Conrad	Kyl	Voinovich

NAYS—47

Akaka	Hagel	Menendez
Bennett	Harkin	Murkowski
Brownback	Hatch	Murray
Burns	Inouye	Obama
Cantwell	Kennedy	Reid
Chafee	Kerry	Salazar
Clinton	Kohl	Sarbanes
Coleman	Landrieu	Schumer
Collins	Lautenberg	Smith
Dayton	Leahy	Snowe
DeWine	Levin	Specter
Durbin	Lieberman	Stabenow
Feingold	Lugar	Stevens
Frist	Martinez	Warner
Graham	McCain	Wyden
Gregg	McConnell	

NOT VOTING—2

Enzi Rockefeller

The amendment (No. 4131) was agreed to.

Mr. KENNEDY. Mr. President, I move to reconsider the vote.

Mr. BINGAMAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. KENNEDY. Mr. President, we are making progress. I see the Senator from Wisconsin on his feet. He has an amendment. We have two amendments following that. Then, hopefully, we will be ready for final passage. I understand we have an hour of time evenly divided.

Mr. FEINGOLD. Mr. President, I hope it will be shorter, but it depends on the response.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

AMENDMENT NO. 4083

Mr. FEINGOLD. Mr. President, I call up amendment No. 4083.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Wisconsin [Mr. FEINGOLD] proposes an amendment numbered 4083.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To strike the provision prohibiting a court from staying the removal of an alien in certain circumstances)

On page 167, strike lines 17 through 20.

Mr. FEINGOLD. Mr. President, this amendment will ensure that asylum seekers, victims of trafficking, and other immigrants are able to secure meaningful judicial review of removal orders. It would strike from the bill a provision that would have the really absurd result of making it harder in many cases for an immigrant to get a temporary stay of removal pending appeal than to actually win on the merits of the case.

Before I go further, I thank Senator BROWBACK for cosponsoring this amendment. He has been tireless in his efforts to help asylum-seekers and trafficking victims, and I am very pleased that we could work together on a bipartisan basis on this effort.

Under section 227(c) of the bill, a court cannot grant a temporary stay of removal pending appeal to an asylum applicant or other individual unless the immigrant proves by clear and convincing evidence that the order is prohibited as a matter of law. That, as we all know, is an extremely difficult standard to satisfy, particularly in the preliminary stage of an appeal. It is so difficult that the Chicago Bar Association called this provision a "potentially devastating threat to due process."

This draconian provision could have a particularly harmful effect on asylum-seekers. It could effectively deny all judicial review to many asylum applicants who might otherwise have successful appeals by allowing them to be sent back to countries where they can face persecution or even death before a Federal court can even rule on their cases.

Section 227(c) would overturn the decisions of seven different courts of appeal that have determined that the Immigration and Nationality Act does not currently require immigrants to meet the very high "clear and convincing evidence" standard for temporary stays of removal pending appeal. I will explain in a bit more detail, as these courts already have, why this very stringent standard would be such bad policy.

First of all, as I have said, in many cases this provision would result in an immigrant having to meet a higher standard of review to get a temporary stay of removal than to prevail on the merits of it. Federal courts review legal issues in asylum and other immigration cases de novo, and they review issues, such as credibility questions in asylum cases, using a lower, "substantial evidence" standard. These standards are nowhere near as difficult to