

SANTA ROSA OFFICE
131 A STONY CIRCLE
SUITE 500
SANTA ROSA, CA. 95401
TELEPHONE: (707) 433-2060

ckerosky@youradvocate.net
www.YourAdvocate.net

KEROSKY & ASSOCIATES
ATTORNEYS AT LAW

SAN FRANCISCO OFFICE
785 MARKET STREET
15TH FLOOR
SAN FRANCISCO, CA. 94103
TELEPHONE: (415) 777 4445

ckerosky@youradvocate.net
www.YourAbogado.net

UPDATE ON IMMIGRATION REFORM, THE DREAM ACT, THE AG JOBS BILL AND THE ARIZONA LAW

The issue of immigration reform has been on the front pages of the newspapers a lot recently, as well as the insidious anti-immigrant law passed in Arizona.

Here is an update:

Reform Plan proposed by Senators and approved by President Obama.

This spring, two Senators (Schumer and Graham) began circulating a plan for comprehensive immigration reform that would be the basis for a comprehensive immigration reform proposal. The plan incorporates the following four key points:

1. Requiring biometric Social Security cards to ensure that illegal workers cannot get jobs;
2. Fulfilling and strengthening our commitments on border security and interior enforcement;
3. Creating a process for admitting temporary workers; and
4. Implementing a tough but fair path to legalization for those already here.

President Obama met with the Senators and immediately endorsed their plan: "I pledge to do everything in my power to forge a bipartisan consensus this year on this important issue."

Later, Senator Graham, the only Republican who supported immigration reform, withdrew his support after the Democrats passed health care reform, which he opposed. The plan is now supported by Democrats only.

Rallies for Immigration Reform and against the Arizona law.

Then, on March 21, the same day that the healthcare plan was approved by the House of Representatives, 150,000 pro-immigration activists marched in the streets of Washington, D.C. In a video shown to the crowd, President Obama stated: "You know as well as I do that this won't be easy, and it won't happen overnight....But if we work together across ethnic, state and party lines, we can build a future worthy of our history as a nation of immigrants and a nation of laws."

The scenes on the street were repeated again on May 1st across the country, as people came out in large numbers to support the proposed reform and condemn the law passed in Arizona. The Arizona bill, passed by the Arizona legislature and signed by the governor in April, began to create some momentum to pass immigration reform as a response.

DREAM Act.

The Obama Administration and the Democratic leadership in Congress have stepped up their efforts to get the DREAM Act passed, although it is still unclear whether it will happen this year.

The United States Senate so far has failed to pass the bill that would have offered a path to permanent residence for certain student immigrants. In September, the proposed law -- the Development, Relief and Education Act for Minors Act ("DREAM Act") -- did not get the required 60 votes to close debate in the Senate and bring about a vote on the legislation.

The bill would amend the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to authorize the adjustment to permanent resident status of certain alien students who are long-term United States residents and who entered the United States as children.

The law would apply only to immigrants who came to the United States prior to their 16th birthday and had not yet turned 30 years old. Applicants would also be required to be of good moral character.

Those eligible under the proposed law would obtain a temporary conditional residence for up to six years. During that time, applicants would receive work permission and protection from deportation. Those immigrants who finished at least two years of college or two years of the military within that six year time period would qualify for permanent residence.

The bill would offer no legalization or other legal status to the parents or other relatives of those qualifying under the Act.

Vote in the Senate.

The bill originally had a large contingent of bi-partisan sponsors who highlighted the model lives of certain students here illegally that would have benefited from the Act. However, the law is opposed by blocs of conservatives as "another amnesty" and now is struggling to get approval due in part to election year politics. Radio talk show hosts and anti-immigrant groups have attacked the bill as "encouraging illegal immigration", despite the very narrow scope of the legislation.

Senate Majority leader Harry Reid added the DREAM Act to a defense appropriations bill in September, in an attempt to obtain quick approval. But the bill failed to get the necessary votes to proceed to a vote, due in part to the fact that many opposed the addition of the termination of the "Don't Ask, Don't Tell" policy towards gays in the military that was also added the same bill.

The law was supported by only 56 Senators, four less than required to close the debate and approve the legislation. Most of the legislation's opponents were Republicans, but several Southern and Western Democrats also voted against the bill.

In an interview with the Spanish-language media, President Obama stated that the DREAM Act was a priority this year and would be a realistic start to bringing about immigration reform, perhaps in the coming year.

Prospects for Future Legislation.

Most likely the DREAM Act legislation will not be voted on again until at least after the November elections, when a lame-duck Congress may consider it again.

The defeat of this legislation would mean there is even less hope for reasonable immigration reform in the next year or two. It appears that many politicians are heeding the small but vocal opposition to immigration reform, rather than the majority of the American people who have repeatedly indicated their support for such legislation.

For now, it appears unlikely that supporters of immigration reform can expect to overcome these strident anti-immigrant forces in the political arena. Only through better political organization and activism can the immigrant community expect to obtain victory in the highly-partisan atmosphere that is American politics today.

Ag Jobs Bill.

A law proposed in the U.S. Congress last year would be a godsend for local farmers who rely on immigrant labor and those immigrants who do the work. With the new Presidential administration and changed composition in Congress, this important legislation may have a chance at passage.

The proposed law, the Agricultural Job Opportunities and Benefits Act (“AgJobs”) would improve the temporary labor program (known as the H2 visa) that many growers use to bring in foreign labor.

Significantly, it would also allow current farmworkers with two years presence here to legalize their status and ultimately get a green card.

The bill was introduced by California Senator Diane Feinstein and other Senators and representatives from both parties, primarily from states with large agricultural production.

The bill is supported by the Obama Administration, but again no movement is being made to pass it.

Legalization of current agricultural workers. Under this legislation, undocumented agricultural workers could legalize their status on certain conditions.

Workers who can prove they worked in American agriculture for at least 150 work days over the previous two years before December 31, 2008 could apply for a new “blue card” or temporary legal immigration status.

The blue card would give the person temporary legal status and a work permit.

The bill also provides a path to citizenship for these agricultural workers. If they continued to work for several more years in an agricultural capacity in the United States, they could qualify for permanent residence or a “green card”.

(Specifically, to qualify they would have to work an additional three years, working at least 150 days per year, or an additional five years, working at least 100 days per year.) In order to obtain permanent residence, workers would have to pay a fine of \$500, pay any back taxes owed, and prove they have not committed any serious crimes.

Persons holding the green card can generally apply for U.S. citizenship after five years.

Improvement of the H2B visa Program.

The other component of the proposed bill is the improvement of the so-called H2 visa program, or the visa issued by the Citizen and Immigration Service for temporary or seasonal labor.

The H2 visa requires employers to prove a shortage of labor with each application, a process called labor certification process that is unrealistically long and complicated. The bill would shorten this process from several months to several days.

The Department of Labor and CIS, which jointly administer this process, would be required to process all aspects of the H-2 visa program much more expeditiously .

This will allow growers to respond more quickly to seasonable labor needs by bringing in labor legally from Mexico and other countries.

Prospects for Passage.

The legislation has the support of both labor and industry. Its proponents have secured the endorsement of over 200 national and state agricultural organizations including the Western Growers, the U.S. Apple Association, the Western United Dairymen and the National Council of Agricultural Employers.

There are co-sponsors of the bill from both parties and the apparent support of the Obama administration. Unlike past years when similar legislation was introduced, the Democrats have a larger majority in the Senate and House, and may be able to defeat expected opposition from the anti-immigrant groups.

Farmers and other agricultural employers would benefit greatly from this legislation by providing help with the perennial problem of finding labor, and allowing growers to do so in a way complying with federal immigration law.

Thousands of immigrant laborers would find a way to legalize their status and earn a path to green cards. The economy and government would benefit from additional tax base and consumer spending. Sounds like a win-win-win solution for the country.

Arizona law.

The Arizona law, known as SB 1070, goes far beyond other laws targeting illegal immigration. SB 1070 gives state police and other public officials the authority to demand people's immigration status based solely on "reasonable suspicion" that they are undocumented.

The law also makes it a felony to be an undocumented immigrant and requires immigrants to carry proof of their legal status or be subject to imprisonment and fines. It also includes a provision which allows anyone to sue a local, county or state agency if they believe the agency is not enforcing immigration laws.

The cities of Los Angeles and San Francisco have voted to boycott the state of Arizona as long as the law is not repealed; many organizations across the country have joined the boycott, cancelling conventions and commercial contracts with the state. Following enactment of Arizona's immigration enforcement law SB 1070 (amended by HB 2162) at least five suits have been filed challenging the legality of the law, and the U.S. Justice Department is expected to file their own legal challenge.

It is not clear when these legal challenges would be finished and so the future of the Arizona law is in doubt.

Prognosis for CIR and its alternatives.

Amid all of the opposition to the Arizona law, there have been renewed calls for immigration reform. However, as President Obama himself has implied, it is not likely that comprehensive immigration reform will be voted on this election year. He has suggested that Congress does not have the "appetite" for immigration reform so soon after the intense battles over health care and financial services reform. The best hope is that its supporters will try to advance a reform bill in early 2011. The Democrats will still probably have a majority next year, and they may try to push it through before the 2012 election campaign begins.

At the moment, there are no Republican senators out of 41 that officially support Comprehensive Immigration Reform. So it will be necessary to attract some Republican support in order to pass reform.

What about alternatives to CIR? One good one is the [DREAM Act](#), allowing certain college students who finished high school here to stay. Senators on both sides of the aisle are co-sponsoring the DREAM Act and there is some hope that it will be voted on in 2010.

Another is the ~~AgJobs bill~~. This law proposed in the U.S. Congress last year would be a godsend for local farmers who rely on immigrant labor and those immigrants who do the work. The proposed law, the Agricultural Job Opportunities and Benefits Act (“AgJobs”) would improve the temporary labor program (known as the H2 visa) that many growers use to bring in foreign labor and provide agricultural workers a path to citizenship. The legislation has the support of both labor and industry. Perhaps if CIR doesn’t advance this year, this important legislation may have a chance at passage.

Conclusion.

Many people believe that there is no other solution to the problem of the undocumented population in this country besides immigration reform. In the summer of 2007, it came very close to passing, but failed because there were just too many Senators who were afraid of the political fallout of voting for reform.

Now it is likely that it will be early 2011 before immigration reform legislation will be brought up in Congress for debate. It is almost certain that it will not happen before the November elections this year.

CHRISTOPHER A. KEROSKY of the law firm of KEROSKY & ASSOCIATES has practiced law since 1984 and has been recognized as one of the top immigration lawyers in Northern California for the last five years by San Francisco Magazine “Super Lawyers” edition (2006-2010). He graduated from University of California, Berkeley Law School and was a former counsel for the U.S. Department of Justice in Washington D.C. He has had an office in San Francisco for 20 years, but recently opened a Santa Rosa office and lives in West Sonoma County.