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Alien Legalization and Adjustment of Status: A Primer

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Summary

Immigration patterns have changed substantially since 1952, when policy makers codifying the Immigration and Nationality Act assumed that most aliens becoming legal permanent residents (LPRs) of the United States would be arriving from abroad. In 1975, more than 80% of all LPRs arrived from abroad. By 2002, however, 64% of all aliens who became LPRs had adjusted in the United States. This report summarizes the main avenues for foreign nationals currently in the United States — legally or illegally — to become LPRs. Alien legalization or "amnesty," as well as adjustment of status and cancellation of removal options, are briefly discussed. Designed as a primer on the issues, the report provides references to other CRS products that track pertinent legislation and analyze these issues more fully. This report will be updated as needed.

Background

Alien legalization or "amnesty," as well as special provisions to allow certain aliens to adjust to legal permanent resident (LPR) status, are among the most controversial issues of U.S. immigration policy. President George W. Bush has proposed a new expanded guest worker program and included an increase in permanent legal immigration as a key component.[1] Among the thorny questions raised by such proposals are: would unauthorized aliens (i.e., illegal aliens) currently in the United States be eligible for the visa? and would the proposal include a mechanism for guest workers to obtain LPR status?[2] This report summarizes the main options for foreign nationals currently in the United States — legally or illegally — to become LPRs. As discussed more fully below, most of these options would hinge on Congress enacting special legislation.

[1] The White House, *Fact Sheet: Fair and Secure Immigration Reform*, Jan. 7, 2004.

[2] For a full discussion and analysis of these issues, see CRS Report RL32044, *Immigration: Policy Considerations Related to Guest Worker Programs*, by Andorra Bruno.

Immigrant admissions, as well as adjustments to LPR status, are subject to a complex set of numerical limits and preference categories that give priority for admission on the basis of family relationships, needed skills, humanitarian concerns, and geographic diversity.[3] When Congress first codified the assortment of immigration laws into the Immigration and Nationality Act (INA) in 1952, the assumption was that most aliens who would receive LPR status would be coming to the United States from abroad. Indeed, 30 years ago, more than 80% of the 386,194 aliens who became LPRs of the United States had arrived from abroad. By FY2002, in contrast, a total of 679,305 aliens (64%) adjusted to LPR status in the United States while only 384,427 arrived as LPRs from abroad.[4] That the number of LPRs arriving from abroad has generally remained around 400,000 for the past 30 years while the total number of LPRs now hovers around one million annually, highlights the contribution that aliens adjusting to LPR status after being in the United States is making to the growth of permanent legal immigration.

In addition to LPRs, each year millions of foreign nationals come temporarily on nonimmigrant visas (e.g., tourists, foreign students and intra-company business transfers). It is estimated that annually 700,000 to 800,000 foreign nationals either overstay their nonimmigrant visas or enter the country illegally and thus are unauthorized aliens. As of March 2004, there were an estimated 10.3 million aliens living here without legal authorization to do so.[5]

Overview on Avenues to LPR Status

There are several main options for aliens in the United States to become LPRs without leaving the country, and as **Figure 1** illustrates, most involving unauthorized aliens would require Congress to enact a law. To adjust status under current law, aliens must be in the United States legally on a temporary visa and eligible for a LPR visa;[6] aliens fleeing persecution may be granted asylum;[7] or — in very limited circumstances — unauthorized aliens may become LPRs through cancellation of removal by an immigration judge. Even aliens in the United States legally on a temporary visa can only adjust to LPR status if they qualify under the statutory set of numerical limits and preference categories that give priority for admission on the basis of family relationships, needed skills, and geographic diversity.

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[3] For analysis of immigration admissions categories, numerical limits, and visa priority dates, see CRS Report RL32235, *U.S. Immigration Policy on Permanent Admissions*, by Ruth Ellen Wasem.

[4] CRS analysis of data published by the U.S. Department of Justice in the *1975 Statistical Yearbook of the Immigration and Naturalization Service* (1977), and U.S. Department of Homeland Security in the *2002 Statistical Yearbook of Immigration* (2004).

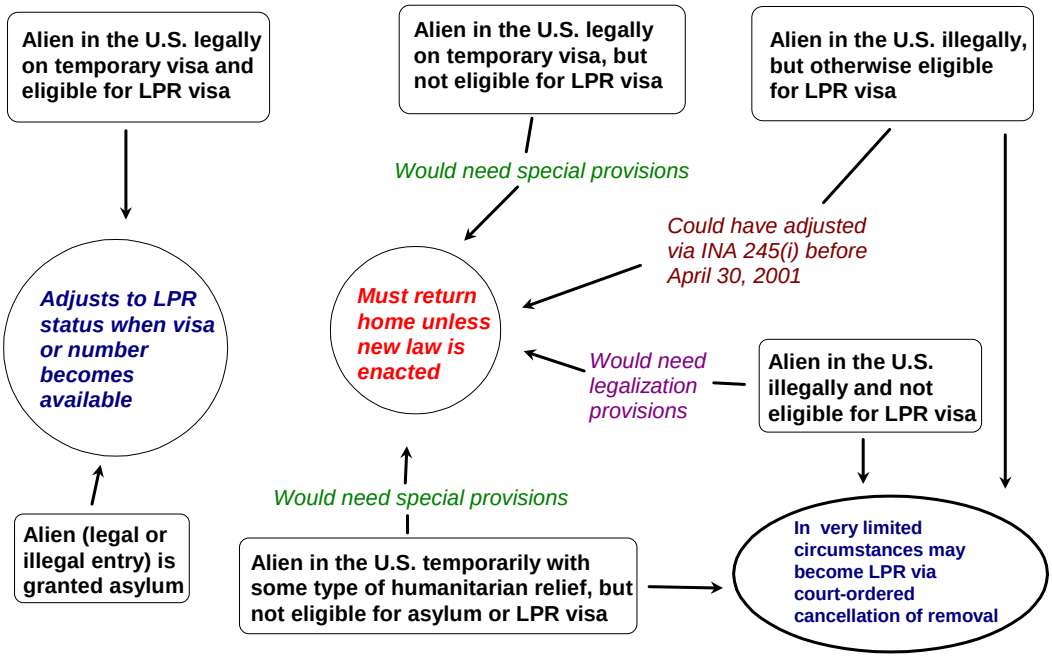
[5] CRS Report RS21938, *Unauthorized Aliens in the United States: Estimates Since 1986*, by Ruth Ellen Wasem.

[6] Business travelers and tourists who come to the United States through the Visa Waiver Program are not eligible for adjustment of status. CRS Report RL32221, *Visa Waiver Program*, by Alison Siskin.

[7] For a full discussion of asylum, see CRS Report RL32621, *U.S. Immigration Policy on Asylum Seekers*, by Ruth Ellen Wasem.

INA §245 permits an alien who is legally but temporarily in the United States to adjust to LPR status if the alien becomes eligible on the basis of a family relationship or job skills, without having to go abroad to obtain an immigrant visa. INA §245 was limited to aliens who were here legally until 1994, when Congress enacted a three-year trial provision (commonly referred to as §245(I)) that allowed aliens here illegally to adjust status once they became eligible for an LPR visa, provided they paid a large penalty fee. In 2000, Congress temporarily reinstated §245(I) through April 30, 2001(P.L. 106-554).[8]

Figure 1. Principal Avenues for Legal Permanent Residence



Source: CRS synthesis of current legal options under the Immigration and Nationality Act.

Special Provisions for Adjustment of Status

Over the years, Congress has enacted statutes that enable certain aliens in the United States on a recognized — but non-permanent — basis to adjust their status to legal permanent residence when they are not otherwise eligible for an immigrant visa. Since the codification of the INA in 1952, there have been at least 16 Acts of Congress that have enabled certain aliens in the United States in some type of temporary legal status to adjust to LPR status. Most of these adjustment of status laws focused on humanitarian cases, e.g., aliens paroled into the United States by the Attorney General or aliens from specific

[8] For background and analysis, see CRS Report RL31373, *Immigration: Adjustment to Permanent Resident Status Under Section 245(i)*, by Andorra Bruno.

countries who were given blanket relief from removal such as temporary protected status (TPS), deferred enforced departure (DED), or extended voluntary departure (EVD).[9]

The other major group of aliens adjusting status through special provisions involved nonimmigrants and typically were employment-based.[10] Beneficiaries of these special provisions included: nonimmigrant alien physicians who had graduated from a medical school or qualified to practice medicine in a foreign state and were fully and permanently licensed and practicing medicine in a U.S. state on January 9, 1978; nonimmigrant retired employees of international organizations and/or their immediate families who have lived in the United States for specified periods of time, totaling at least 15 years for eligible adults and 7 years for children; and nonimmigrant nurses here as of September 1, 1989 who had been employed in the United States as registered nurses for at least three years before application for adjustment and whose continued employment met specified certification standards.

Legalization

The issue of whether aliens residing in the United States without legal authorization may be permitted to become LPRs has been debated periodically, and at various times Congress has enacted legalization programs. In 1929, for example, Congress enacted a law that some consider a precursor to legalization because it permitted certain aliens arriving prior to 1921 "in whose case there is no record of admission for permanent residence" to register with INS's predecessor agency so that they could become LPRs. In 1952, Congress included a registry provision (aimed at aliens who had been admitted but whose files were lost) when it codified the INA, and this provision ultimately evolved into an avenue for unauthorized aliens to legalize their status.[11]

When Congress passed the Immigration Reform and Control Act (IRCA) of 1986, it included provisions that enabled several million aliens illegally residing in the United States to become LPRs. Generally, legislation such as IRCA is referred to as an "amnesty" or a legalization program because it provides LPR status to aliens who are otherwise residing illegally in the United States.[12] Although legalization is considered

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[9] For background on blanket forms of relief and the nationals who have received them, see CRS Report RS20844, *Temporary Protected Status: Current Immigration Policy and Issues*, by Ruth Ellen Wasem and Karma Ester.

[10] CRS Congressional Distribution Memorandum, *Special Adjustment of Status Legislation, 1957-1996*, by Joyce Vialet, Mar. 28, 1998. (Available from author of this report.)

[11] For background and analysis, see CRS Report RL30578, *Immigration: Registry as Means of Obtaining Lawful Permanent Residence*, by Andorra Bruno.

[12] Some consider the Nicaraguan Adjustment and Central American Relief Act (NACARA) of 1997 a legalization program because the primary beneficiaries were Nicaraguans and Cubans who had come to the United States by December 1, 1995, but who had not been given any recognized legal status typically afforded to humanitarian migrants such as Temporary Protected Status, Extended Voluntary Departure, or Deferred Enforced Departure. Others view the Nicaraguans as having a quasi-legal status because the creation of the Nicaraguan Review Program in 1987 by then-Attorney General Edwin Meese gave special attention to the Nicaraguans who had been denied asylum.

distinct from adjustment of status, most legalization provisions are codified under the adjustment or change of status chapter of INA.

There were two temporary legalization programs created by IRCA.[13] The "pre-1982" program provided legal status for otherwise eligible aliens who had resided continuously in the United States in an unlawful status since before January 1, 1982. They were required to apply during a 12-month period beginning May 5, 1987. The "special agricultural worker" (SAW) program provided legal status for otherwise eligible aliens who had worked at least 90 days in seasonal agriculture in the United States during the year ending May 1, 1986. They were required to apply during an 18-month period beginning June 1, 1987 and ending November 30, 1988. Approximately 2.7 million aliens qualified for legal status under the pre-1982 and SAW programs. Of this total, 1.6 million or 59% qualified under the pre-1982 program, and 1.1 million or 41% qualified under the SAW program.[14]

Cancellation of Removal

The Attorney General has the discretionary authority under the INA to grant relief from deportation and adjustment of status to otherwise illegal aliens who meet certain criteria. Generally, aliens seeking this type of relief are those who have established "deep roots" in the United States and who can demonstrate good moral character as well as hardship to their family here if they are returned to their native country. Decisions to grant relief are made on a case-by-case basis. This avenue, formerly known as suspension of deportation, is now called cancellation of removal as a result of the Illegal Immigrant Reform and Immigrant Responsibility Act (IIRIRA) of 1996 (Division C of P.L. 104-208).

In addition to changing the name, IIRIRA established tighter standards for obtaining this relief. The hardship threshold previously was "extreme" hardship to the alien, the alien's citizen or permanent resident alien spouse, children, or parent. Now the language states "exceptional and extremely unusual hardship." The length of time the alien had to be physically residing in the United States was increased from 7 to 10 years. Moreover, the time span used to calculate the 10-year physical presence requirement now terminates when the alien receives a notice to appear (the document that initiates removal proceedings) or when the alien commits a serious crime. IIRIRA also established for the first-time limits on the number of people who could receive cancellation of removal — 4,000 each fiscal year.[15]

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[13] Act of Nov. 6, 1986, P.L. 99-603; 100 Stat. 3359. The legalization provisions under discussion here were amendments to INA. The pre-1982 program was authorized by §245A of the INA and the special agricultural worker (SAW) program by §210 of the INA.

[14] CRS Congressional Distribution Memorandum, *Alien Legalization Provisions of IRCA*, by Joyce Vialet, Feb. 26, 1999. (Available from author of this report.)

[15] For a fuller discussion of the provisions, see CRS Report 97-606, *Suspension of Deportation: Tighter Standards for Canceling Removal*, by Larry M. Eig; and CRS Report 97-702, *Suspension of Deportation: Effect of §309(c)(5) of IIRIRA on Pending Deportation Cases*, by Larry M. Eig and Andre O. Mander.