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Immigration Legislation and Issues in the 117th Congress

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Immigration Legislation and Issues in the 117th Congress

The 117th Congress has taken action on bills that address a range of immigration issues and has enacted several immigration provisions as of the cover date of this report. The immigration-related language included in two appropriations acts largely concerns the immigration of Afghan nationals to the United States. The Emergency Security Supplemental Appropriations Act, 2021 (P.L. 117-31) includes provisions to facilitate admissions under the special immigrant visa (SIV) program for Afghans who worked for or on behalf of the U.S. government. The Extending Government Funding and Delivering Emergency Assistance Act (P.L. 117-43, Division C) makes certain Afghans who have been granted authorization to be in the United States under immigration parole eligible for certain federal benefits on a temporary basis. In addition, the National Defense Authorization Act for Fiscal Year 2022 (NDAA; P.L. 117-81) contains provisions on U.S. citizenship for noncitizen members of the U.S. military.

Multiple other immigration-related bills have seen floor or committee action in one chamber, mainly in the House. These bills address temporary and permanent immigration, humanitarian admissions, and legalization of unauthorized immigrants, among other issues. House-passed measures include the American Dream and Promise Act of 2021(H.R. 6), the Farm Workforce Modernization Act of 2021 (H.R. 1603), the Build Back Better Act (BBBA; H.R. 5376), and the America Creating Opportunities for Manufacturing, Pre-Eminence in Technology, and Economic Strength Act of 2022 (COMPETES Act; H.R. 4521). The Senate has passed the United States Innovation and Competition Act of 2021 (USICA; S. 1260). Bills receiving committee action include the Ensuring American Global Leadership and Engagement Act (EAGLE Act; H.R. 3524) in the House and the Safeguarding American Innovation Act (S. 1351) in the Senate.

This report discusses these and other immigration-related measures that have received legislative action in the 117th Congress. Department of Homeland Security appropriations for FY2022 are addressed in CRS Report R47005, *Department of Homeland Security Appropriations: FY2022* and, for the most part, are not covered here.

SUMMARY

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Introduction

The 117th Congress has acted on bills focusing on a range of immigration issues. Much of this legislative activity has occurred in the House. For purposes of this report, bills receiving congressional action include measures that have been enacted into law, passed by one chamber, reported or ordered to be reported by a committee, or the subject of a committee hearing.

Several immigration provisions have been enacted as part of larger measures. The immigration language included in two appropriations acts chiefly concerns the immigration of Afghan nationals to the United States. The Emergency Security Supplemental Appropriations Act, 2021 (P.L. 117-31), enacted in July 2021 during the U.S. military withdrawal from Afghanistan, includes provisions to facilitate admissions under the special immigrant visa (SIV) program for Afghans who worked for or on behalf of the U.S. government. The Extending Government Funding and Delivering Emergency Assistance Act (P.L. 117-43) makes Afghans who were granted immigration parole during a specified period temporarily eligible for certain federal benefits. In addition, the National Defense Authorization Act for Fiscal Year 2022 (NDAA; P.L. 117-81) includes provisions on U.S. citizenship for members of the U.S. military.

Other immigration legislation that has been considered by the 117th Congress as of the cover date of this report largely relates to temporary and permanent immigration, humanitarian admissions, and legalization of unauthorized immigrants. The House has passed several measures that address these issues. They include the American Dream and Promise Act of 2021 (H.R. 6), the Farm Workforce Modernization Act of 2021 (H.R. 1603), the Build Back Better Act (BBBA; H.R. 5376), and the America Creating Opportunities for Manufacturing, Pre-Eminence in Technology, and Economic Strength Act of 2022 (COMPETES Act; H.R. 4521). The Senate has passed the United States Innovation and Competition Act of 2021 (USICA; S. 1260). Bills receiving committee action include the Ensuring American Global Leadership and Engagement Act (EAGLE Act; H.R. 3524) in the House and the Safeguarding American Innovation Act (S. 1351) in the Senate.

These and other bills receiving floor or committee action also address access to legal counsel, machine-readable visa documentation, and immigration enforcement, among other issues. For example, both S. 1260 and S. 1351 would require machine-readable visa documentation. Immigration enforcement is the subject of several bills, including the House-passed Shadow Wolves Enhancement Act (H.R. 5681).

This report is organized by immigration topic. The topics included are based on the provisions in the immigration-related bills that have received congressional action as of the cover date of this report.[1]

Nonimmigrant and Immigrant Visas

The Immigration and Nationality Act (INA) provides for the admission of aliens[2] (foreign nationals) to the United States on a temporary basis on nonimmigrant visas and on a permanent basis on immigrant visas. Persons who are admitted permanently are granted lawful permanent

[1] For the most part, Department of Homeland Security appropriations are not covered in this report. They are the subject of CRS Report R47005, *Department of Homeland Security Appropriations: FY2022*.

[2] *Alien* is the term used in the INA for any person who is not a citizen or national of the United States. INA §101(a)(3) (8 U.S.C. §1101(a)(3)).

resident (LPR) status. In most cases, principal nonimmigrants and immigrants can be accompanied to the United States by their spouses and unmarried minor children (hereinafter referred to as *children*).[3]

Nonimmigrant Visas

Nonimmigrants are admitted to the United States for a temporary period of time and specific purpose. Nonimmigrant visa categories are identified by letters and numbers, based on the INA sections that authorize them.[4]

The Department of State (DOS), the Department of Homeland Security (DHS), and the Department of Labor (DOL) each play key roles in administering the law and setting policies on the admission of nonimmigrants. Foreign nationals living outside the United States who wish to enter the country apply for a visa at a U.S. embassy or consulate abroad. For certain classes of nonimmigrant workers (such as H-2A and H-2B workers, discussed below), an employer must first submit an application to DOL's Office of Foreign Labor Certification, a process that is designed to protect the interests of U.S. workers. If approved, the employer then petitions DHS's U.S. Citizenship and Immigration Services (USCIS) on behalf of the worker. Finally, DOS interviews the worker and issues a visa if applicable conditions are met.

While each type of nonimmigrant visa is subject to its own set of criteria, there are some requirements that apply more generally. These include, for example, the INA grounds of inadmissibility (which are described in the "INA Grounds of Inadmissibility" section below). Another requirement that applies to most foreign nationals seeking to qualify for nonimmigrant visas is the general presumption in INA Section 214(b) that aliens seeking admission to the United States intend to settle permanently. As a result, most prospective nonimmigrants must demonstrate that they are not coming to reside permanently. The Section 214(b) presumption is the most common basis for rejecting nonimmigrant visa applications, accounting for over 70% of ineligibility findings in FY2020.[5] There are three nonimmigrant visas for which *dual intent* is allowed, meaning that the prospective nonimmigrant is permitted simultaneously to seek admission to the United States on a nonimmigrant visa and LPR status. Nonimmigrants seeking H-1B visas (specialty occupation workers), L visas (intracompany transferees), or V visas (family members of LPRs awaiting immigrant visas) are exempt from the requirement to show that they are not coming to the United States to live permanently.[6] Legislation has been considered in the 117th Congress that relates to existing nonimmigrant visas or proposes to establish new visas, as detailed below.

Treaty Traders and Investors (E-1/E-2 Visas)

Treaty traders and investors may enter the United States on E-1 or E-2 nonimmigrant visas, respectively. To qualify for either visa, a foreign national must be a citizen or national of a country with which the United States maintains a treaty of commerce and navigation.[7] In

[3] The term *child*, as used in the INA, means an unmarried person under age 21. INA §101(b)(1) (8 U.S.C. §1101(b)(1)). This report employs the same usage, unless otherwise noted.

[4] For additional information about nonimmigrant categories, see CRS Report R45040, *Immigration: Nonimmigrant (Temporary) Admissions to the United States*.

[5] DOS, *Report of the Visa Office 2020*, Table XIX.

[6] For more information on the INA Section 214(b) presumption of immigrant intent and the concept of *dual intent*, see CRS Report R45040, *Immigration: Nonimmigrant (Temporary) Admissions to the United States*.

[7] 8 C.F.R. §214.2(e)(6). For the current list of countries that qualify, see DOS, "Treaty Countries,"

addition, the foreign national must demonstrate that the purpose of coming to the United States is, in the case of the E-1 visa, "to carry on substantial trade, including trade in services or technology, principally between the United States and the treaty country"; or, in the case of the E-2 visa, "to develop and direct the operations of an enterprise in which the national has invested, or is in the process of investing, a substantial amount of capital."[8]

Some Members of Congress have expressed concern about the recent trend of nationals of non-treaty countries becoming eligible for E-1 and E-2 visas by gaining citizenship in a treaty country through a financial contribution to its private or public sector (or both).[9] Aimed at addressing this concern, H.R. 2571, as passed by the House, would require at least three years of residence in the treaty country for all E-1 and E-2 applicants who obtained treaty country nationality through a financial investment. H.R. 2571 would also make nationals of Portugal eligible for E-1 and E-2 nonimmigrant visas if the government of Portugal provides similar nonimmigrant status to U.S. nationals.

Academic Students (F-1 Visas)

International students pursuing full-time academic education or language training may travel to the United States on F-1 visas. Like most prospective nonimmigrants, F-1 visa applicants are subject to Section 214(b) of the INA, which, as mentioned previously, generally presumes that all aliens seeking admission to the United States intend to settle permanently. Section 80303 of H.R. 4521, as passed by the House, would extend dual intent to F-1 students studying science, technology, engineering, and mathematics (STEM). As such, they would be permitted to obtain F-1 visas or status even if they intended to seek LPR status.

Agricultural Workers (H-2A Visas)

The "H" category is the major nonimmigrant visa category for temporary workers. It includes the H-2A visa for agricultural workers. The H-2A visa allows for the temporary admission of foreign workers to the United States to perform agricultural labor of a temporary or seasonal nature. It is governed by provisions in the INA and by regulations issued by DHS and DOL. It is not subject to a numerical cap.[10]

Title II of H.R. 1603, as passed by the House, proposes significant changes to the H-2A visa, including with respect to required wages. Currently, H-2A employers must pay the highest of several wage rates: the federal or state minimum wage rate, prevailing wage rate, adverse effect wage rate (AEWR), or agreed-upon collective bargaining wage rate. Historically, the AEWR, which is an average hourly wage for field and livestock workers combined in a state or region, has often been the highest of these rates. Among its wage-related provisions, H.R. 1603 would retain the requirement for employers to pay the highest of the listed wage rates, but it would change the way the AEWR is determined. For calendar years 2023 through 2031, the bill proposes to calculate separate AEWRs for individual occupational classifications, preferably by state or region if such data are reported. For later years, it would direct DOL, in consultation with

https://travel.state.gov/content/visas/en/fees/treaty.html.

[8] INA §101(a)(15)(E) (8 U.S.C. §1101(a)(15)(E)).

[9] For more information on these citizenship-by-investment (CBI) programs, see CRS In Focus IF11344, The Changing Landscape of Immigrant Investment Programs.

[10] For additional information about the H-2A visa, see CRS Report R44849, *H-2A and H-2B Temporary Worker Visas: Policy and Related Issues*.

the Department of Agriculture, to establish a process for annually determining the AEWR or a successor wage.

Among its other H-2A provisions, H.R. 1603 proposes to establish a six-year Portable H–2A Visa Pilot Program to enable a limited number of H-2A workers to perform agricultural labor for employers who would not need to file H-2A petitions. However, the employers would need to go through a registration process, pay H-2A required wages, and meet other requirements. In addition, H.R. 1603 would allow DHS to approve petitions for H-2A workers to perform non-temporary or non-seasonal agricultural work, subject to an initial annual numerical limitation of 20,000.

Allowing H-2A workers to perform work that is year-round in nature is also the subject of a provision in the Department of Homeland Security Appropriations Act, 2022 (H.R. 4431), as reported by the House Appropriations Committee. Section 412 of that bill would permit the admission of H-2A workers in FY2022 to perform non-temporary or non-seasonal agricultural work. (Separate provisions in H.R. 1603 to establish a dedicated pathway to LPR status for H-2A workers are discussed in the "Employment-Based Visas for Agricultural Workers" section below.)

Nonagricultural Workers (H-2B Visas)

Another temporary worker visa is the H-2B visa for nonagricultural workers. It allows for the temporary admission of foreign workers to the United States to perform nonagricultural labor of a temporary nature if unemployed U.S. workers are not available.[11] The H-2B visa is subject to a statutory annual numerical cap. Under the INA, the total number of aliens who may be issued H-2B visas or otherwise provided with H-2B nonimmigrant status in any fiscal year may not exceed 66,000. H.R. 4431 (§411) would authorize DHS to increase the number of foreign nationals who may receive H-2B visas beyond the statutory cap for FY2022 upon a determination that the needs of U.S. businesses cannot be met by U.S. workers. Congress has enacted analogous provisions for each fiscal year since FY2017.[12]

Exchange Visitors (J Visas)

The J visa allows for the temporary admission of exchange visitors, which include professors, research scholars, students, and foreign medical school graduates.[13] As described in DOS regulations, the purpose of the Exchange Visitor Program is to "increase mutual understanding between the people of the United States and the people of other countries by means of educational and cultural exchanges. Educational and cultural exchanges assist the Department of State in furthering the foreign policy objectives of the United States."[14]

In recent years, access to sensitive U.S. technology and intellectual property by exchange visitors and other foreign nationals—particularly those from the People's Republic of China (PRC), Iran, and Russia—has been a source of concern for some Members of Congress.[15] Two bills receiving Senate action in the 117th Congress—the Senate-passed S. 1260) and S. 1351, as ordered to be

[11] For additional information about the H-2B visa, see ibid.

[12] For additional information about H-2B numerical limitations, see CRS Report R44306, *The H-2B Visa and the Statutory Cap*.

[13] For additional information about J visas, see CRS Report R45040, *Immigration: Nonimmigrant (Temporary) Admissions to the United States*.

[14] 22 C.F.R. §62.1.

[15] For further discussion of these issues, see CRS Report R46915, *China's Recent Trade Measures and Countermeasures: Issues for Congress*.

reported by the Senate Homeland Security and Governmental Affairs Committee—seek to address this issue. Section 4497 of S. 1260 and Section 6 of S. 1351 would add requirements for sponsors of exchange programs involving foreign researchers and scientists in order to protect "technologies regulated by export control laws important to the national security and economic interests of the United States."

Proposed Nonimmigrant Visas

South Korean Specialty Occupation Workers (E-4 Visas)

Current law provides for the admission of temporary workers in three visa classes to perform services in *specialty occupations.* The INA defines *specialty occupation* as "an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States."[16] Specialty occupations may include, but are not limited to, architecture, engineering, education, accounting, law, and the arts. The main visa class for specialty occupation workers is H-1B. The other visa classes for these workers—H-1B1 and E-3—are associated with free trade agreements and are limited to citizens of Chile (H-1B1), Singapore (H-1B1), and Australia (E-3).[17]

Section 80306 of H.R. 4521, as passed by the House, would create a new nonimmigrant visa category (E-4) for specialty occupation workers who are nationals of South Korea. The number of E-4 visas issued annually to South Korean specialty occupation workers could not exceed 15,000; spouses and children of E-4 workers would not be subject to this cap.

Entrepreneurs (W Visas)

Under current law, no nonimmigrant visa exists for foreign entrepreneurs who wish to come to the United States to start businesses. Section 80301 of H.R. 4521, as passed by the House, would create a new "W" category of nonimmigrant visas for entrepreneurs (W-1 visas), their employees (W-2 visas), and the spouses and children of persons granted W-1 and W-2 status (W-3 visas). Section 80302 of H.R. 4521 would establish procedures by which a foreign national involved in a start-up entity that has received a certain level of financial investment could self-petition DHS for approval as a nonimmigrant entrepreneur before applying for a W visa from abroad or for a change of status to W nonimmigrant status from within the United States. Applicants for W nonimmigrant visas or status would be allowed dual intent, meaning that they would not be subject to the presumption of immigrant intent that applies to most applicants for nonimmigrant visas (see the "Nonimmigrant Visas" section above). W-1 status would be valid for an initial period of three years and could be extended if the start-up entity attracted further financial investment, created jobs, or generated a certain level of revenue and growth. Start-up entities could petition for employees to receive W-2 status. Spouses and children of W-1 and W-2 nonimmigrants could receive W-3 status and would be authorized to work in the United States. Under H.R. 4521, a W nonimmigrant would also be allowed to self-petition for LPR status as an immigrant entrepreneur along with his or her spouse and children (see the "Proposed Immigrant Visas for Entrepreneurs" section below).

[16] INA §214(i)(1) (8 U.S.C. §1184(i)(1)).

[17] For more information on these nonimmigrant visa categories, see CRS Report R43735, *Temporary Professional, Managerial, and Skilled Foreign Workers: Policy and Trends*.

Immigrant Visas

Immigrant visas allow for the permanent admission of foreign nationals to the United States. Persons so admitted become LPRs (also referred to as *green-card holders*). The INA limits permanent immigrant admissions to 675,000 persons annually, but there are exemptions from this cap.[18] LPRs can live and work permanently in the United States and can become U.S. citizens through the naturalization process.

Prospective immigrants must maneuver a multistep process through federal departments and agencies to become LPRs. First, petitions for LPR status are filed with USCIS by the prospective immigrant or by the sponsoring relative or employer in the United States (in the case of family-sponsored or employment-based immigration, respectively). If the prospective LPR is residing abroad, the petition is forwarded to the DOS Bureau of Consular Affairs in the alien's home country after USCIS has approved it. The individual then must acquire an immigrant visa at a DOS consulate that allows him or her to seek admission at a U.S. port of entry. If the prospective immigrant is already legally residing in the United States, USCIS handles most of the process, which the INA refers to as *adjustment of status* because the alien is moving from a temporary status to LPR status. Foreign nationals can receive an immigrant visa or apply to adjust status only if an immigrant visa number is immediately available.

Family-Sponsored and Employment-Based Immigrants

Permanent admissions to the United States are dominated by two immigration pathways: family-sponsored immigration and employment-based immigration. These pathways, which account for the majority of foreign nationals who become LPRs each year, reflect two core principles of U.S. policy on permanent immigration: reunification of families and the admission of immigrants with needed skills, respectively. There are two subgroups of family-sponsored immigrants: (1) immediate relatives of U.S. citizens[19] and (2) family-sponsored preference immigrants.[20]

There are statutory limits on the number of family-sponsored preference and employment-based immigrant visas that may be issued each fiscal year.[21] In addition, there is a statutory per-country ceiling that limits the number of family-sponsored and employment-based immigrant visas that nationals from any single country can receive to no more than 7% of the total annual limit.[22] This ceiling is intended to prevent monopolization of family-sponsored preference and employment-based green cards by a few countries. These numerical limits apply to both principal applicants and any accompanying spouses and children.

H.R. 3524 (§303(e)), as ordered to be reported by the House Foreign Affairs Committee, and H.R. 4521 (§30303(e)), as passed by the House, would require that, for five years, Hong Kong be

[18] For an overview of the U.S. system of permanent admissions, see CRS Report R42866, *Permanent Legal Immigration to the United States: Policy Overview*.

[19] INA Section 201(b)(2)(A)(i) (8 U.S.C. §1151(b)(2)(A)(i)) defines *immediate relatives* to include spouses and unmarried minor children of U.S. citizens, and parents of adult U.S. citizens.

[20] The INA outlines five numerically limited preference categories of family-sponsored immigrants in Section 203(a) (8 U.S.C. §1153(a)). For more information on these categories, see CRS Report R43145, *U.S. Family-Based Immigration Policy*.

[21] Both sets of immigrant visas use a system of preference categories. For additional information about these preference systems, see CRS Report R42866, *Permanent Legal Immigration to the United States: Policy Overview*.

[22] Immediate relatives of U.S. citizens are not subject to numerical limitations or the per-country ceiling.

treated as if it were a separate country from the PRC for purposes of the 7% per-country ceiling on immigrant visas.[23]

Recapture of Immigrant Visas

Processing issues and INA statutory language prevent some family-sponsored and employment-based immigrant visas from being used each year, and they subsequently become unavailable.[24] When these visas go unused, Congress may recapture them through legislation. Some Members of Congress regularly propose such legislation to address the employment-based visa queue. This queue (sometimes called a *backlog*) currently consists of roughly 1 million foreign nationals and their family members with approved employment-based immigrant petitions who are waiting for a numerically limited immigrant visa. The queue exists because the number of foreign workers petitioning for green cards each year exceeds the INA annual limit. In the case of nationals from large migrant-sending countries such as India and the PRC, the numerical limit in combination with the per-country ceiling has created decades-long waits for green cards.[25] Similarly, the family-based queue includes 3.8 million foreign nationals and their family members with approved family-sponsored immigrant petitions who are waiting for numerically limited immigrant visas.[26]

The 117th Congress has considered related legislation. H.R. 5376, as passed by the House, would amend the INA to make employment-based visa numbers that are unused in a fiscal year available for use in the following fiscal year, as currently occurs for most unused family-sponsored visa numbers.[27] The bill would also recapture any remaining family-sponsored and employment-based immigrant visas that went unused from FY1992 through FY2021. CRS has estimated the total number of recapturable immigrant visas at roughly 440,000.[28]

Section 409 of H.R. 4431, as reported by the House Appropriations Committee, would recapture all family-sponsored and employment-based immigrant visas that were authorized for FY2020 and FY2021 but remain unused. For FY2020, the numbers of unused family-sponsored and employment-based immigrant visas were 132,000 and 9,100, respectively; for FY2021, the estimated numbers are 140,000 and 62,000, respectively.[29] This provision would therefore recapture an estimated 272,000 family-sponsored and 71,100 employment-based immigrant visas. Recaptured visas would remain available until used.

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[23] The Immigration Act of 1990 (P.L. 101-649) mandated that Hong Kong be treated as a separate country for purposes of numerical limitations on immigrant visas, but Executive Order 13936 of July 14, 2020, suspended the application of that provision.

[24] For additional information on these issues, see CRS Congressional Distribution Memorandum, *Assessing Four Department of State Methods to Compute Recapturable Immigrant Visa Numbers*, September 8, 2021 (available to congressional staff upon request).

[25] For additional information, see CRS Report R46291, *The Employment-Based Immigration Backlog*.

[26] DOS, National Visa Center, *Annual Report of Immigrant Visa Applicants in the Family-sponsored and Employment-based preferences Registered at the National Visa Center as of November 1, 2020*, undated.

[27] This provision would fix a quirk in the INA that prevents unused employment-based immigrant visas from *falling across* and being used the following year for family-sponsored preference immigrants. For more information on this issue, see CRS Congressional Distribution Memorandum, *Assessing Four Department of State Methods to Compute Recapturable Immigrant Visa Numbers*, September 8, 2021 (available to congressional staff upon request).

[28] For additional information, see ibid.

[29] The source for the FY2020 figures is DOS, *Annual Numerical Limits FY-2021*, undated. The source for the FY2021 estimates is Charles Oppenheim, Chief of Visa Control and Reporting Division, DOS, email correspondence to CRS, November 9, 2021. The 2021 estimates are subject to change.

Employment-Based Visas for Holders of Advanced STEM Degrees

Employment-based immigration occurs through five numerically limited preference categories. The first three are based on professional accomplishment and ability. The first (EB-1) includes "priority workers," such as "aliens with extraordinary ability," the second (EB-2) includes "members of the professions holding advanced degrees or aliens of exceptional ability," and the third (EB-3) includes "skilled workers, professionals, and other workers." The fourth preference category includes various "special immigrants" (this category is discussed in a separate section below), and the fifth includes immigrant investors.[30]

Section 80303 of H.R. 4521, as passed by the House, would allow prospective EB-1 and EB-2 immigrants who either have STEM doctorates or work in a critical industry (as defined in Section 20209 of the bill) and have STEM master's degrees, along with their spouses and children, to petition for LPR status without regard to INA numerical limits. Principal petitioners would have to pay a $1,000 supplemental fee in addition to required processing fees that would fund scholarships for low-income individuals through the National Science Foundation.

As noted, prospective family-sponsored and employment-based immigrants legally residing in the United States, and who have approved immigrant petitions, can file an adjustment of status application with USCIS only when an immigrant visa number becomes immediately available for them.

Employment-Based Visas for Agricultural Workers

Under the employment-based immigration system, agricultural workers have only limited opportunities to become LPRs, and temporary or seasonal agricultural workers, such as H-2A workers, have no means to do so (see the "Agricultural Workers (H-2A Visas)" section above). The EB-3 subcategory for unskilled workers (termed "other workers") excludes workers performing labor that is temporary or seasonal in nature.

Section 207 of House-passed H.R. 1603 would expand opportunities for agricultural workers to obtain LPR status. It would increase the number of immigrant visas available for the EB-3 category from the current 40,040 to 80,040. The additional 40,000 immigrant visas would be reserved for workers who could either perform agricultural labor in the United States or demonstrate employment as an H-2A temporary agricultural worker in the United States for 100 days in each of 10 years. This latter group of qualified agricultural workers would be able to self-petition for immigrant visas, whereas all other EB-3 prospective immigrants would still need an employer to petition on their behalf. The agricultural worker immigrant visas would not be subject to the 7% ceiling governing all employment-based immigrant visas or to the labor certification requirements for all EB-3 immigrant visas.

Adjustment of Status

As noted, prospective family-sponsored and employment-based immigrants who are legally residing in the United States and have approved immigrant petitions can file an adjustment of status application with USCIS only when an immigrant visa number becomes immediately available for them. Because demand for immigrant visa numbers far exceeds INA limits, many foreign nationals must wait years to adjust to LPR status. H.R. 5376, as passed by the House,

[30] For additional information about these employment-based preference categories, see CRS Report R42866, *Permanent Legal Immigration to the United States: Policy Overview*.

would amend the main adjustment of status section in the INA[31] to facilitate adjustment of status for certain prospective family-sponsored and employment-based immigrants.

H.R. 5376 would allow prospective family-sponsored and employment-based immigrants to file to adjust to LPR status even if an immigrant visa number is not immediately available. Filers would have to pay a supplemental fee of $1,500 (plus $250 for every adjusting family member). Filing to adjust status does not grant LPR status, and filers still must wait for an immigrant visa number before actually adjusting status. However, filing provides benefits including continued lawful presence without having to maintain another status, flexibility to travel abroad, and eligibility to work for any U.S. employer. The bill would provide eligible spouses and children with identical benefits.

H.R. 5376 would also allow DHS to grant LPR status to certain adjustment of status filers regardless of visa number availability. To be eligible, prospective immigrants would have to be the beneficiaries of approved immigration petitions filed at least two years prior to applying for LPR status under this provision. They would also have to pay a supplemental fee of $2,500 for family-sponsored immigrants, $5,000 for employment-based immigrants (except EB-5 immigrant investors[32]), and $50,000 for EB-5 immigrant investors.[33]

Special Immigrants

Special immigrants comprise a separate preference category of employment-based immigration. This category encompasses a hodgepodge of classifications, many of which have a humanitarian and/or public service element.[34]

Three statutory SIV programs cover Afghan and Iraqi nationals. One is a permanent program for Afghans and Iraqis who worked directly with U.S. Armed Forces, or under Chief of Mission (COM), authority as translators or interpreters. This program is capped at 50 principal applicants (excluding spouses or children) annually. The other two programs (one for Afghans and one for Iraqis) are temporary.[35] The 117th Congress has acted on legislation to make changes to these two temporary programs and to establish a new special immigrant program for certain residents of Hong Kong.

Temporary Program for Afghan Nationals

The temporary Afghan SIV program applies to Afghans employed by or on behalf of the U.S. government, or by the International Security Assistance Force (ISAF), in Afghanistan. P.L. 117-31 makes changes to this Afghan SIV program that increase the number of potential beneficiaries. For example, Section 401 amends the program's eligibility provisions to eliminate the two-year work requirement for principal applicants submitting petitions after September 2015; now all petitioners are subject to the same one-year work requirement. This section also increases the number of visas available for issuance to principal applicants after December 2014 from 26,500 to 34,500, and extends the deadline for submitting an initial application under the program for

[31] INA §245 (8 U.S.C. §1255).

[32] For more information on the EB-5 immigrant investor visa, see CRS Report R44475, *EB-5 Immigrant Investor Visa*.

[33] For additional information on these provisions, see CRS Insight IN11811, *Build Back Better Act: Immigration Provisions*.

[34] For background information on the special immigrant category, see CRS Report R43725, *Iraqi and Afghan Special Immigrant Visa Programs*.

[35] For further information on the SIV programs for Afghans and Iraqis, see ibid.

Chief of Mission approval from December 2022 to December 2023. Another section of the act (§403(b)) amends the statutory provisions on surviving spouses and children of deceased applicants to expand their access to the program.[36]

In an effort to expedite admissions to the United States under this program, P.L. 117-31 (§402) temporarily authorizes DOS and DHS to jointly issue a blanket waiver of the INA requirement that persons undergo a medical examination prior to visa issuance or U.S. admission. It further directs DHS to ensure that persons granted such a waiver undergo the examination in the United States. These same waiver provisions were also passed by the House in the stand-alone Honoring Our Promises through Expedition (HOPE) for Afghan SIVs Act of 2021 (H.R. 3385).

Another bill passed by the House on the temporary Afghan SIV program is the Averting Loss of Life and Injury by Expediting SIVs Act of 2021 (H.R. 3985). Like P.L. 117-31, H.R. 3985 includes provisions to increase the number of available SIVs and to expand access to SIVs for surviving spouses and children. It also proposes other statutory changes. These include eliminating the requirement that SIV applicants show they have experienced a serious threat as a result of their employment, and broadening qualifying employment to encompass work through a U.S. government-funded cooperative agreement or grant.

House-passed H.R. 4521 (§80307) proposes to establish a new category of principal applicants under the temporary Afghan SIV program. The category would cover Afghan nationals who were selected between October 7, 2001, and August 31, 2022, to participate in the Fulbright exchange program or another educational or cultural exchange activity administered by DOS. Category members granted special immigrant status would not count against the numerical limits on the Afghan SIV program or INA numerical limits.

The temporary SIV program for Iraqis who worked for or on behalf of the U.S. government is winding down. The application period for this program closed in 2014, and, as of September 30, 2021, there were 371 visas remaining for issuance to principal applicants.[37] The program is scheduled to end when all these visas are used or when there are no more applicants to be issued visas, whichever occurs first. In an apparent effort to prevent visas from going unused, P.L. 117-31 (§404) provides that applications (petitions) under the permanent program for translators and interpreters can be converted to applications under this program until all available visas have been used. Another provision in P.L. 117-31 (§403(c)) expands access for surviving spouses and children of deceased applicants to this temporary SIV program.

Proposed Program for Hong Kong Residents

H.R. 3524 (§303(a)), as ordered to be reported by the House Foreign Affairs Committee, and House-passed H.R. 4521 (§30303(a)) would establish the category of *Priority Hong Kong Resident* for U.S. immigration purposes. They would define such a priority resident as (1) a permanent resident of Hong Kong who, as of the date of enactment of the legislation, holds no right to citizenship in any country or jurisdiction except the PRC, Hong Kong, or Macau; has

[36] For information and data on application processing under this program as of September 30, 2021, see *Joint Department of State/Department of Homeland Security Report: Status of the Afghan Special Immigrant Visa Program*, October 2021, https://travel.state.gov/content/dam/visas/SIVs/Afghan-Public-Quarterly-Report-Q4-October-2021.pdf. As of September 30, 2021, there were 16,768 visas (of the 34,500 visa total) available for issuance to principal applicants (spouses and children are not subject to this cap).

[37] *Joint Department of State/Department of Homeland Security Report: Status of the Iraqi Special Immigrant Visa Program*, October 2021, https://travel.state.gov/content/dam/visas/SIVs/Iraqi-Public-Quarterly-Report-Q4-October-2021.pdf. Spouses and children of principal applicants are not counted against the cap.

resided in Hong Kong for the last 10 years; and has been designated by the U.S. government as meeting the preceding requirements, or (2) the spouse or child[38] of such a permanent resident. H.R. 3524 (§303(j)) and H.R. 4521 (§30303(j)) would make individuals who are Priority Hong Kong Residents and meet other requirements eligible for special immigrant status. Among these other requirements, the individual would need to have a bachelor's degree or higher degree and be the subject of a determination by DHS that his or her relocation to the United States would provide a significant benefit to the country. The bills would cap the total number of principal aliens (excluding spouses and children) that could be provided special immigrant status under this program at 5,000 annually for five years.

Proposed Program for Essential Scientists and Technical Experts

House-passed H.R. 4521 (§80401) would establish a new special immigrant program for certain scientists and technical experts whose admission to the United States is determined by the Department of Defense to be "essential to advancing the research, development, testing, or evaluation of critical technologies." The number of principal applicants who could be granted special immigrant status would be limited annually to 10 for FY2002 through FY2030, and to 100 for subsequent fiscal years. The spouse and children of the principal applicant would also be eligible for special immigrant status.

Diversity Immigrant Visas

Like family reunification and U.S. labor market contributions, origin-country diversity is a core principle underlying the permanent admissions systems. This principle finds expression in the diversity immigrant visa (DV) program (sometimes referred to as the *visa lottery*), which seeks to foster legal immigration from countries other than the major sending countries of current immigrants to the United States.[39] The INA makes a total of 55,000 DVs available annually to natives of countries whose immigrant admissions to the United States totaled less than 50,000 over the preceding five years combined.

The 117th Congress has acted on bills related to diversity visas. One of these bills is H.R. 3524, as ordered to be reported by the House Foreign Affairs Committee, which, as noted, would require that for five years Hong Kong be treated as if it were a separate country from the PRC. The PRC is one of about 20 countries whose nationals are ineligible to apply for DVs due to their high number of immigrant admissions. Hong Kong had been treated separately from the PRC for purposes of the diversity visa program and Hong Kong residents were eligible to apply for DVs until Executive Order 13936 of July 14, 2020, required that Hong Kong be treated as part of the PRC.[40] One effect of the provision in H.R. 3524, if enacted, would be that residents of Hong Kong would again be eligible for DVs.

Recapture of Diversity Visas

Because DV demand far exceeds the INA's annual limit of 55,000, applicants are selected by lottery. Being chosen as a *selectee* (*lottery winner*) does not guarantee receipt of a DV; rather, it identifies those who are eligible to apply for one. To receive a visa, selectees must successfully

[38] The bill defines *child* for this purpose as an unmarried child under age 27.

[39] For more information on this program, see CRS Report R45973, *The Diversity Immigrant Visa Program*.

[40] The Immigration Act of 1990 (P.L. 101-649) mandated that Hong Kong be treated as a separate country for purposes of numerical limitations on immigrant visas, but Executive Order 13936 suspended the application of that provision.

complete the application process (including security and medical screenings and in-person interviews) by the end of the fiscal year for which they were selected, or they lose their eligibility. Section 60002 of H.R. 5376 would allow DV selectees for FY2017 through FY2021 to remain eligible for DVs if they were unable to complete the visa application process or were barred from traveling to or entering the United States on a DV for certain reasons. Those reasons relate to (1) four orders[41] issued by President Donald Trump restricting entry of foreign nationals from certain countries and (2) restrictions or limitations on visa processing, visa issuance, travel, or other effects of the COVID-19 public health emergency. CRS estimates Section 60002 would make a maximum of roughly 80,000 DVs available.[42]

Proposed Immigrant Visas for Entrepreneurs

Section 80302 of H.R. 4521, as passed by the House, would allow certain nonimmigrants in the United States to self-petition for classification as immigrant entrepreneurs. This section would apply to persons in W nonimmigrant status (see the "Entrepreneurs (W Visas)" section above) or another nonimmigrant status under which the individuals are employed by a start-up entity. To be eligible, an individual would have to have maintained status as a nonimmigrant as well as his or her ownership interest in the start-up entity, and play an active role in its operation. The start-up entity would be required to have created at least 10 jobs; received not less than $1.25 million in investments, grants, or awards; and generated at least $1 million in annual revenues in the two years preceding the immigrant petition filing. Aliens classified as immigrant entrepreneurs, and their spouses and children, could apply for immigrant visas or to adjust to LPR status outside INA numerical limits. (These visas would be separate from the existing employment-based immigrant investor visas, known as EB-5 visas.[43])

Other Visa-Related Provisions

DOS Bureau of Consular Affairs

Among its other responsibilities, the DOS Bureau of Consular Affairs adjudicates nonimmigrant and immigrant visa applications and issues visas to approved applicants. The Department of State Authorization Act of 2021 (H.R. 1157, §1005), as passed by the House, would establish an explicit statutory basis for this bureau.

Humanitarian Immigration Mechanisms

The INA authorizes various forms of humanitarian relief for foreign nationals; each of these is subject to its own requirements and processes. Some offer set pathways to LPR status while others are limited to providing temporary relief.

[41] Executive Order 13769, Executive Order 13780, Presidential Proclamation 9645, and Presidential Proclamation 9983. For more information on these orders, see CRS Legal Sidebar LSB10458, *Presidential Actions to Exclude Aliens Under INA § 212(f)*.

[42] For additional information on these provisions, see CRS Insight IN11811, *Build Back Better Act: Immigration Provisions*.

[43] For information on EB-5 visas, see CRS Report R44475, *EB-5 Immigrant Investor Visa*.

Refugee Status and Asylum

The INA sets forth the processes and requirements for a foreign national to be granted refugee status or asylum. A core requirement for both forms of relief is satisfaction of the INA definition of a *refugee*.[44] This definition generally provides that a refugee is a person who is outside his or her country and is unable or unwilling to return because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. Applicants for refugee status undergo processing abroad, while asylum applications are filed and processed within the United States.

The refugee and asylum systems differ with respect to numerical limitations. Refugee admissions are subject to an annual ceiling that is set by the President after consultation with Congress. The refugee ceiling for FY2022 is 125,000. Asylum grants, by contrast, are not numerically limited.

The ways in which prospective beneficiaries may access these forms of humanitarian relief also differ. The INA generally allows for foreign nationals in the United States or at a U.S. port of entry to apply for asylum, subject to applicable requirements. Eligible individuals apply for asylum on their own behalf. (An asylum provision applicable to certain Afghans in the United States is discussed in the "Parole" section below.)

By contrast, access to the U.S. refugee program is based on a set of processing priorities. An individual must fall under a processing priority (or category) to be considered for refugee admission to the United States. The processing priority system is overseen by DOS's Bureau of Population, Refugees, and Migration (PRM), which has general management responsibility for the U.S. refugee program. A provision in House-passed H.R. 1157 (§1005) would establish an explicit statutory basis for PRM.

Among the refugee program's processing priorities are Priority 1 (P-1) and Priority 2 (P-2). P-1 covers individual cases referred to the U.S. refugee program by designated entities based on the individuals' circumstances and apparent need for resettlement. P-2 covers groups of special humanitarian concern to the United States. It includes specific groups that may be defined by their nationalities, ethnicities, or other characteristics. P-2 groups are identified by DOS in consultation with DHS and other entities. Each P-2 group is subject to particular eligibility criteria and access procedures.

There are longstanding P-2 groups for members of certain religious minority groups in Eurasia and the Baltic countries and in Iran. These particular P-2 groups are subject to a reduced evidentiary standard for meeting the definition of a refugee in accordance with a statutory provision known as the Lautenberg amendment (first enacted in 1989 as part of P.L. 101-167).[45] The Lautenberg amendment has been regularly extended over the years, although at times there have been lapses between extensions. The provision lapsed most recently at the end of FY2021. Language to extend the Lautenberg amendment through FY2022 is included in the House-passed Department of State, Foreign Operations, and Related Programs Appropriations Act, 2022 (H.R. 4373, Division G, §7034(l)(5)).

H.R. 3524 (§307), as ordered to be reported by the House Foreign Affairs Committee, and House-passed H.R. 4521 (§30306) would direct DOS to establish a P-2 group for certain Uyghurs and other residents of the Xinjiang Uyghur Autonomous Region (XUAR) in the PRC. This P-2 group

[44] INA §101(a)(42) (8 U.S.C. §1101(a)(42)).

[45] For additional information on this provision, see CRS Report RL31269, *Refugee Admissions and Resettlement Policy*.

would encompass persons who were PRC nationals and XUAR residents on January 1, 2021; persons who fled the XUAR after June 30, 2009; and their spouses, children,[46] and parents. The bill also defines a subset of these individuals that would be eligible for processing for refugee admission or asylum under the Lautenberg amendment's reduced evidentiary standard for meeting the definition of a refugee. This subset would include persons who have experienced persecution in the XUAR by the PRC government. These sections of H.R. 3524 and H.R. 4521 would terminate 10 years after the date of enactment.

H.R. 3524 (§303(i)), as ordered to be reported by the House Foreign Affairs Committee, and House-passed H.R. 4521 (§30303(i)) would make the Lautenberg amendment's reduced evidentiary standard for meeting the definition of a refugee applicable to certain prospective refugees and asylees from Hong Kong. This reduced standard would be applicable to an individual who is a Priority Hong Kong Resident (as described above in the "Proposed Program for Hong Kong Residents" section) and meets one of several other criteria (such as having had a significant role in an organization supportive of the 2019-2020 Hong Kong protests). It would also apply to such an individual's spouse or child (if these family members were themselves Priority Hong Kong Residents) or parent (if he/she was a citizen of no state other than the PRC). Persons granted refugee status under these provisions would not count against the refugee cap.

Temporary Protected Status/Deferred Enforced Departure

Congress created Temporary Protected Status (TPS) in 1990 (P.L. 101-649) to provide relief from removal and work authorization for foreign nationals in the United States from countries experiencing armed conflict, natural disaster, or other extraordinary conditions that prevent their safe return.[47] As of the cover date of this report, the United States has designated 13 countries for TPS.[48] As of February 16, 2022, approximately 355,000 individuals were protected by TPS. In addition, certain Liberians, Venezuelans, and Hong Kong residents living in the United States are protected from removal by Deferred Enforced Departure (DED), a form of blanket relief similar to TPS. Unlike TPS, however, DED is not statutory; it emanates from the President's constitutional powers to conduct foreign relations.

Section 303(d) of H.R. 3524, as ordered to be reported by the House Foreign Affairs Committee, and Section 30303(d) of H.R. 4521, as passed by the House, would designate Hong Kong for TPS for a period of 18 months, allowing permanent residents of Hong Kong who are living in the United States at the time of the bill's enactment to apply. In addition, some Members of Congress have expressed an interest in providing longer-term relief to TPS holders, most of whom have been living in the United States for at least 20 years (see the "Temporary Protected Status/Deferred Enforced Departure Population" section below).

Parole

The INA parole provision gives the DHS Secretary discretionary authority to "parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to

[46] The bill defines *child* for this purpose as an unmarried child under age 27.

[47] For more information on TPS, see CRS Report RS20844, *Temporary Protected Status and Deferred Enforced Departure*.

[48] These countries are Burma, El Salvador, Haiti, Honduras, Nepal, Nicaragua, Somalia, South Sudan, Sudan, Syria, Ukraine, Venezuela, and Yemen.

the United States."[49] Immigration parole is official permission to enter and remain temporarily in the United States. A person granted parole (*parolee*) may receive work authorization. A parolee does not have a dedicated pathway to LPR status but may be able to obtain such status if eligible under an existing avenue, such as the family-based immigration system or asylum.[50]

During the summer of 2021, DHS paroled tens of thousands of Afghan nationals into the United States. Division C of P.L. 117-43 provides that Afghans paroled into the United States during specified periods are eligible for the same resettlement assistance and other federal benefits as refugees until the later of March 31, 2023, or the end of the individual's parole period. Another provision of P.L. 117-43 directs DHS to expedite the adjudication of asylum applications filed by these Afghan parolees.

House-passed H.R. 5376 would direct DHS to grant parole initially for five years or until September 30, 2031 (whichever is earlier) to any foreign national who has been living in the United States since before January 1, 2011, and meets other requirements. The initial parole period could subsequently be extended until September 30, 2031. During any such period of parole, the parolee would be provided with employment authorization.

Special Pathways to LPR Status

At several points during the past 20 years, Congress has considered legislation to establish pathways to LPR status for certain groups of foreign nationals in the United States. These bills have focused largely, but not exclusively, on persons without a lawful immigration status, such as unauthorized childhood arrivals (commonly referred to as *Dreamers*). As noted previously, LPRs can live permanently in the United States and can become U.S. citizens.

Past measures have included stand-alone bills with pathways to LPR status for unauthorized childhood arrivals (these bills typically have been referred to as *Dream Acts*[51]) as well as bills proposing broader changes to the immigration system that included LPR pathways for different groups. An example of the latter is S. 744, as passed by the Senate in the 113th Congress, which included a general LPR pathway for certain foreign nationals in the United States since December 2011 as well as shorter pathways for childhood arrivals and agricultural workers.

In the 117th Congress, proposed LPR pathways have focused on several overlapping groups (discussed in the following sections): Dreamers, dependents of long-term nonimmigrants, persons eligible for TPS or DED, agricultural workers, and essential workers. Bills seeing action in the 117th Congress that would establish new pathways to LPR status for one or more of these groups include H.R. 6, which was passed by the House and was the subject of a Senate Judiciary Committee hearing; H.R. 1603, which was passed by the House; and the Citizenship for Essential Workers Act (S. 747), which was the subject of a hearing by the Senate Judiciary Committee's Subcommittee on Immigration, Citizenship, and Border Safety.

[49] INA §212(d)(5) (8 U.S.C. §1182(d)(5)).

[50] For additional information on parole, see CRS Report R46570, *Immigration Parole*.

[51] For information on Dream Act proposals, see CRS Report R45995, *Unauthorized Childhood Arrivals, DACA, and Related Legislation*.

Dreamers

Dreamers have long been seen by many policymakers as a sympathetic subset of unauthorized immigrants because they were brought into the United States as children. Since 2001, legislation has been introduced in Congress to enable them to obtain U.S. lawful permanent residence.

Title I of House-passed H.R. 6 would establish a pathway to LPR status for childhood arrivals without a lawful immigration status and other specified groups (see sections below on "Children of Long-Term Nonimmigrants" and "Temporary Protected Status/Deferred Enforced Departure Population"). This mechanism would be available to foreign nationals who entered the United States before reaching age 18 and have been continuously present in the country since January 1, 2021.

In most cases, the process to obtain LPR status under H.R. 6 would have two stages, with requirements at each stage. In addition to the requisite age at entry and continuous presence, the requirements to obtain *conditional* LPR status in stage 1 include an educational requirement. Recipients of Deferred Action for Childhood Arrivals (DACA) would be subject to a streamlined application procedure to obtain conditional LPR status that would be established by DHS.[52] In stage 2, a conditional LPR would have to meet a second set of requirements to have the conditional basis of his or her status removed and become a full-fledged LPR. Among these requirements are a minimum number of years of either postsecondary education, military or related service, or paid employment; and knowledge of English and U.S. civics. At both stages, the individual would need to undergo security and law enforcement background checks and clear the applicable INA grounds of inadmissibility (see the "INA Grounds of Inadmissibility" section below) and additional criminal and national security grounds, as specified in the bill.

Under H.R. 6, conditional LPR status would be valid for 10 years. However, a conditional LPR could apply to have the condition on his or her status removed at any time after meeting the stage 2 requirements. In addition, the bill would provide that an applicant meeting all the stage 1 and stage 2 requirements at the time of submitting an initial application would be granted full-fledged LPR status directly (without first being granted conditional status).

Children of Long-Term Nonimmigrants

In recent years, attention to Dreamers has expanded to encompass a separate group of people who may be subject to removal from the United States after spending much of their childhood here. This group, sometimes referred to as *legal or documented Dreamers*, are the children of long-term nonimmigrant (i.e., temporary) workers and, as such, are eligible for nonimmigrant status as dependents until they turn 21.[53] In many cases, the parents have applied for employment-based green cards (and included their minor children on their applications). However, because of the annual numerical limits and 7% per-country ceiling that apply under the permanent immigration system (see the "Family-Sponsored and Employment-Based Immigrants" section above), many such prospective immigrants—particularly from major migrant-sending countries such as India and the PRC—must wait decades to receive LPR status.[54] As a result, a significant portion of

[52] For information on DACA, see CRS Report R46764, *Deferred Action for Childhood Arrivals (DACA): By the Numbers*.

[53] For more information on this population, see CRS Insight IN11844, *Legal Dreamers*.

[54] For more information, see CRS Report R45447, *Permanent Employment-Based Immigration and the Per-country Ceiling*.

nonimmigrant children reach age 21 and age out, or lose their immigration status, before they receive permanent status.[55]

Historically, children of long-term nonimmigrants have not been covered by bills to provide LPR status to Dreamers because those measures typically have been limited to individuals who lack lawful immigration status. The 117th Congress has taken action to provide immigration relief to certain legal Dreamers. Title I of H.R. 6, as passed by the House, would make the children of temporary workers in E-1, E-2, H-1B, or L nonimmigrant status[56] eligible for the LPR pathway for Dreamers described in the preceding section.

Temporary Protected Status/Deferred Enforced Departure Population

The legalization provisions for childhood arrivals in Title I of House-passed H.R. 6 would be open to persons with TPS or DED protection who met the age at arrival, continuous presence, and other requirements (see the "Dreamers" section above). In addition, Title II of the bill includes a separate TPS/DED pathway to LPR status. It would enable aliens who were eligible for TPS as of January 1, 2017, or eligible for DED as of January 20, 2021, and have been living in the United States for at least three years, to apply for LPR status.[57] Other requirements include clearance of the applicable INA grounds of inadmissibility and security and law enforcement background checks. These provisions would cover nationals of 14 countries. Certain individuals with TPS or DED protection would also be covered by the agricultural worker legalization provisions in House-passed H.R. 1603 (discussed in the next section).

Unauthorized Agricultural Workers

Unauthorized agricultural workers, like Dreamers, have long been the subject of immigration legalization proposals. Supporters of these proposals commonly cite their contributions and importance to the U.S. agricultural economy.

Title I of the Farm Workforce Modernization Act of 2021 (H.R. 1603) would establish a mechanism for certain agricultural workers in the United States to obtain a lawful immigration status. It would apply to unauthorized agricultural workers as well as agricultural workers who have TPS or are under a DED grant (see the "Temporary Protected Status/Deferred Enforced Departure Population" section above).

H.R. 1603 would enable agricultural workers who had performed 180 work days of agricultural labor in the United States during the two years prior to the bill's date of introduction (March 8, 2021) to obtain a new legal temporary status termed certified agricultural worker (CAW) status. Other eligibility requirements for CAW status would include continuous presence in the United States since March 8, 2021, completion of security and law enforcement background checks, and clearance of specified INA grounds of inadmissibility and other criminal ineligibilities.

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[55] For more information on wait times for employment-based LPR status, see CRS Report R46291, *The Employment-Based Immigration Backlog*.

[56] E-1 status is for treaty traders and E-2 status is for treaty investors (see the "Treaty Traders and Investors (E-1/E-2 Visas)" section), H-1B status is for workers in specialty occupations, and L status is for intracompany transferees. For more information on these and other temporary worker categories, see CRS Report R43735, *Temporary Professional, Managerial, and Skilled Foreign Workers: Policy and Trends*.

[57] To be eligible for LPR status under this provision, the applicant must not have engaged in conduct since that date that would render him or her ineligible for TPS.

CAW status would be valid for 5 1/2 years. Notably, it could be extended in 5 1/2-year increments indefinitely, provided that the individual performed a threshold amount of agricultural labor each year, underwent background checks, and had not become inadmissible or ineligible under specified grounds.

An individual in CAW status could be granted LPR status after performing a requisite number of years of agricultural labor while in CAW status and satisfying other requirements. These include continued clearance of the grounds of inadmissibility and ineligibility for CAW status and satisfaction of any applicable federal tax liability.

Subject to specified requirements, H.R. 1603 would provide for the granting of CAW dependent status to the spouses and children of principal applicants granted CAW status, and for the granting of LPR status to the spouses and children of principal applicants granted LPR status.

Essential Workers

Some lawmakers have proposed a new pathway to LPR status for noncitizen workers who have engaged in what have been deeemed "essential" occupations during the COVID-19 pandemic. S. 747 would allow for the adjustment to LPR status of certain noncitizens who performed qualifying work. A qualifying individual's parents, spouse, sons, and daughters[58] would also be eligible to adjust to LPR status, subject to specified requirements.

Eligible workers include those who earned income for work in sectors, industries, or occupations in categories specified in the bill, as well as any other work designated in March 2020 guidance from DHS as "essential critical infrastructure labor or services,"[59] or any work designated essential by a state or local government. The work must have been performed at any time during the period beginning on January 27, 2020 (the first day of the COVID-19 public health emergency declared by the Department of Health and Human Services[60]), and ending 90 days after the date the public health emergency terminates. The bill does not specify a minimum required period of employment. Applicants must have been continuously physically present in the United States since January 1, 2021. They also would be required to complete security and law enforcement background checks and clear specified INA grounds of inadmissibility and other criminal ineligibilities.

INA Grounds of Inadmissibility

The INA enumerates grounds of inadmissibility, which are grounds upon which foreign nationals are ineligible to receive visas or to be admitted to the United States. These include criminal and security grounds as well as grounds related to health, the likelihood of becoming a public charge (indigent), alien smuggling, lack of entry documentation, and unlawful presence in the United States, among others.[61]

[58] The bill does not specify a maximum age for the sons and daughters.

[59] DHS, Cybersecurity & Infrastructure Security Agency (CISA), "Advisory Memorandum on Identification of Essential Critical Infrastructure Workers During COVID–19 Response," as revised March 28, 2020. CISA's guidance was updated most recently on August 10, 2021.

[60] U.S. Department of Health and Human Services, Office of the Assistant Secretary for Preparedness and Response, "Determination that a Public Health Emergency Exists," January 31, 2020. The determination has been continually renewed, most recently on January 14, 2022.

[61] INA §212(a) (8 U.S.C. §1182(a)).

S. 1351 (§5), as ordered to be reported by the Senate Homeland Security and Governmental Affairs Committee, would amend the INA security-related grounds of inadmissibility to restrict foreign nationals from acquiring certain export-controlled goods, technologies, or sensitive information. Under the new language, an alien would be inadmissible if a DOS or DHS officer believed that the individual sought to enter the United States to acquire such goods, technologies, or information, and DOS determined that such acquisition would be contrary to U.S. national security, including economic security. To assist DOS in making determinations about inadmissibility and visa eligibility, S. 1351 would require DOS to use machine-readable visa application forms and to make materials submitted in support of visa applications available in a machine-readable format (see the "Machine-Readable Visa Documentation" section below).

S. 1260, as passed by the Senate, includes language to restrict the acquisition of emerging technologies by certain aliens. Under Section 4495 of the bill, an alien would be inadmissible if DOS determined that the individual was seeking U.S. entry "to knowingly acquire sensitive or emerging technologies to undermine national security interests of the United States by benefitting an adversarial foreign government's security or strategic capabilities." S. 1260 also includes language like that in S. 1351 to require visa application forms and supporting documentation to be machine readable (see the "Machine-Readable Visa Documentation" section below).

Other Issues and Legislation

In addition to taking action on the issues discussed above, the 117th Congress has considered legislation on a range of other immigration-related topics.

Military Naturalization

The INA contains provisions to facilitate naturalization (the process by which foreign nationals become U.S. citizens) for members of the U.S. Armed Forces. These include some exemptions from the usual requirements for naturalization, such as residence and physical presence periods, and expedited timelines for eligibility depending on whether the service was during peacetime or a designated period of military hostilities.[62] P.L. 117-81 (Title V, Subtitle C, §523) directs the Secretary of each military department to prescribe regulations to ensure that upon enlistment, noncitizen military recruits receive proper notice of their options for naturalization under the INA. In addition, it requires that upon separation from service, USCIS and the Department of Defense provide noncitizen members of the Armed Forces with notice of their options for naturalization.

Automatic Citizenship for Children Adopted Internationally

Automatic citizenship provisions for intercountry adoptees of U.S. citizen parents that were enacted in 2000 (P.L. 106-395) require adoptees to have been under age 18 on February 27, 2001. Section 80308 of House-passed H.R. 4521 would amend this 2000 law so that any eligible adoptee who met the requirements for U.S. citizenship before age 18 may be granted citizenship, including those who were born on or before February 27, 1983.

[62] INA §§328, 329 (8 U.S.C §§1439, 1440); for additional information on military naturalization, see CRS In Focus IF10884, *Expedited Citizenship through Military Service*.

Executive Action on Immigration

The National Origin-Based Antidiscrimination for Nonimmigrants Act (NO BAN Act; H.R. 1333), as passed by the House, would amend an INA provision[63] that broadly authorizes the President to suspend, or impose restrictions on, the entry of aliens into the United States whenever the President finds that their entry would be detrimental to U.S. interests. The revision proposed by H.R. 1333 would place restrictions on this authority. Among these restrictions, it would limit the President to temporarily suspending, or imposing restrictions on, entry and would require that the duration of the suspension or restriction be specified. In addition, prior to the exercise of this presidential authority, DOS and DHS would be required to "provide Congress with specific evidence supporting the need for the suspension or restriction and its proposed duration."

In addition, H.R. 1333 would amend an INA provision[64] that generally prohibits nondiscrimination in the issuance of immigrant visas on the basis of race, sex, nationality, place of birth, or place of residence. It would make the INA provision applicable beyond the issuance of immigrant visas (to encompass the issuance of nonimmigrant visas and other categories of admission, for example) and would add religion as a protected category.

Access to Legal Counsel

Access to legal counsel is an issue that arises in different contexts in the U.S. immigration system, including in interactions at U.S. ports of entry between foreign nationals seeking U.S. entry and officers of DHS's U.S. Customs and Border Protection (CBP), and in formal removal proceedings in immigration court. The Access to Counsel Act of 2021 (H.R. 1573), as passed by the House, would amend the INA to ensure that a covered individual seeking entry into the United States has the opportunity to consult with counsel and an interested party (such as a relative) during the CBP inspection process. For purposes of H.R. 1573, covered individuals include LPRs returning from trips abroad, foreign nationals with valid visas seeking immigrant or nonimmigrant admission, refugees, and foreign nationals approved for immigration parole.[65]

The Commerce, Justice, Science, and Related Agencies Appropriations Act, 2022 (H.R. 4505, Title II), as reported by the House Appropriations Committee, would appropriate $50 million for the Office of Justice Programs in the Department of Justice to establish a grant pilot program to provide legal representation to immigrant children and families seeking asylum and other forms of legal protection in the United States.

Machine-Readable Visa Documentation

Concerns about grant fraud have led to recommendations to require all documents supporting federal research grant proposals to be machine readable.[66] Senate-passed S. 1260 (§4496) and S. 1351 (§5), as ordered to be reported by the Senate Homeland Security and Governmental Affairs Committee, include requirements along these lines that would apply to foreign nationals seeking

[63] INA §212(f) (8 U.S.C. §1182(f)).

[64] INA §202(a)(1)(A) (8 U.S.C. §1152(a)(1)(A)).

[65] For a comparison of procedural protections (including access to counsel) available to aliens arriving at the U.S. border and within the United States, see CRS Legal Sidebar LSB10150, *Immigration Laws Regulating the Admission and Exclusion of Aliens at the Border*.

[66] For related discussion, see U.S. Senate, Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations, *Threats to the U.S. Research Enterprise: China's Talent Recruitment Plans*, pp. 11, and 75-82.

U.S. visas. These provisions would require DOS to make materials submitted in support of visa applications available in a machine-readable format to assist in identifying fraud, conducting law enforcement activities, and determining visa eligibility (also see the "INA Grounds of Inadmissibility" section above).

Supplemental Immigration Fees

USCIS performs multiple functions, its main one being the processing of immigrant petitions. Its budget relies largely on user fees. Historically, only a small portion of the agency's funding has been provided through appropriations. H.R. 5376, as passed by the House, would appropriate $2.8 billion to USCIS to fund the cost of processing applications and petitions associated with the bill's provisions. To help pay for this appropriation, the bill would also establish nine supplemental USCIS immigration processing fees ranging from $19 for entering nonimmigrants to $15,000 for EB-5 immigrant investors. Fee revenues would be deposited into Treasury's general fund, rather than being set aside solely for USCIS operations.

DHS Trusted Traveler Programs

Trusted traveler programs expedite the inspection of preapproved, low-risk travelers to the United States. Individuals who apply for membership in trusted traveler programs provide personal data that is checked against terrorist and criminal databases to determine if they present a low security risk. If approved, travelers gain access to dedicated lanes and kiosks at selected U.S. ports of entry, which expedite the security screening process. Major U.S. trusted traveler programs that are open to U.S. citizens, LPRs, and foreign nationals include Global Entry, Secure Electronic Network for Travelers Rapid Inspection (SENTRI), and NEXUS (not an acronym).[67]

The Trusted Traveler Reconsideration and Restoration Act of 2021 (H.R. 473), as passed by the House and ordered to be reported by the Senate Homeland Security and Governmental Affairs Committee, would address cases in which an individual's enrollment in a trusted traveler program is revoked in error. In such cases, the bill would direct DHS to extend the individual's active enrollment in the program for a period equal to the period of revocation upon his or her re-enrollment.

U.S. Immigration and Customs Enforcement Special Agents

DHS's U.S. Immigration and Customs Enforcement (ICE) has a Homeland Security Investigations (HSI) tactical patrol unit that operates on the lands of the Tohono O'odham Nation (along the U.S.-Mexico border). Two similar bills receiving action in the 117th Congress would reclassify tactical enforcement officers (commonly known as *Shadow Wolves*) assigned to this unit as special agents. The Shadow Wolves Enhancement Act (S. 2541), as ordered to be reported by the Senate Committee on Homeland Security and Governmental Affairs, and a House bill (H.R. 5681) of the same name, as passed by the House, would ensure special agents successfully complete specified federal law enforcement training. In addition, the bills would require the DHS Secretary to submit to specified congressional committees a strategy for retention, recruitment, and expansion of the Shadow Wolves program in appropriate areas along the Southwestern border.

[67] For additional information, see CRS Report R46783, *Trusted Traveler Programs*.

Border Tunnel Remediation

The DHS Illicit Cross-Border Tunnel Defense Act (H.R. 4209), as ordered to be reported by the House Homeland Security Committee, would require the CBP Commissioner to develop a strategic plan to address illicit cross-border tunnel activity. The strategic plan would establish risk-based criteria and promote the use of technologies to identify, breach, assess, and remediate illicit cross-border tunnels to reduce the impact of such tunnels on surrounding communities. In addition, the plan would create processes for information sharing across border patrol sectors, including sector-level indicators of identified tunnels, and would include an assessment of technology and staffing needs.

Fraud in Immigration Services

The Fight Notario Fraud Act of 2021 (H.R. 4435), as ordered to be reported by the House Judiciary Committee, would establish penalties for certain types of fraud and misrepresentation in the provision of immigration services. It would impose fines or imprisonment on any person who knowingly defrauds or receives money (or anything else of value) by false pretenses in any matter arising under the immigration laws. Similarly, it would impose fines or imprisonment on any person who misrepresents himself or herself as an attorney or an accredited representative in any matter under the immigration laws. H.R. 4435 would also impose penalties on persons who knowingly engage in related threats and retaliation.

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