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Immigration Legislation and Issues in the 117th Congress

Updated October 21, 2022

Congressional Research Service
https://crsreports.congress.gov
R47061

CRS REPORT
Prepared for Members and
Committees of Congress

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.

Most of the immigration provisions that have been enacted by the 117th Congress are part of appropriations acts. The Consolidated Appropriations Act, 2022 (P.L. 117-103) makes changes to the EB-5 immigrant investor program and extends the EB-5 Regional Center Program through the end of FY2027. It also includes provisions that extended three immigration programs and authorized the Department of Homeland Security (DHS) to make additional H-2B nonagricultural worker visas available through the end of FY2022. The immigration programs are the E-Verify employment eligibility verification program, the Conrad State Program for foreign medical graduates, and the special immigrant religious worker program. In addition, the Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023 (P.L. 117-180, Division A, §101(6)) similarly extends these programs and the H-2B authority through December 16, 2022.

The immigration language in three other appropriations acts chiefly concerns the immigration of Afghans and Ukrainians 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 certain Afghans with immigration parole eligible for refugee-like federal benefits. P.L. 117-180 extends the availability of these benefits to Afghans who are paroled into the United States through the duration of the continuing resolution. The Additional Ukraine Supplemental Appropriations Act, 2022 (P.L. 117-128) makes certain Ukrainians with immigration parole eligible for certain federal assistance.

Other enacted legislation with immigration provisions includes the National Defense Authorization Act for Fiscal Year 2022 (NDAA; P.L. 117-81), which addresses U.S. citizenship for members of the U.S. military and Trusted Traveler Programs; the Shadow Wolves Enhancement Act (P.L. 117-113), an immigration enforcement measure; and, the Bridging the Gap for New Americans Act (P.L. 117-210), which concerns employment opportunities for noncitizen foreign-trained professionals in the United States.

Other immigration legislation that has passed one chamber 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), H.R. 5376 (a version often referred to as the Build Back Better Act),[1] the America Creating Opportunities for Manufacturing, Pre-Eminence in Technology, and Economic Strength Act of 2022 (America COMPETES Act; H.R. 4521), and the NDAA for FY2023 (H.R. 7900). The Senate has passed the United States Innovation and Competition Act of 2021 (USICA; S. 1260) as well as an amended version of H.R. 4521 containing the text of USICA, which also carries the name USICA.

[1] H.R. 5376 has been enacted as P.L. 117-169, often referred to as the Inflation Reduction Act of 2022. This law does not include the immigration provisions in the House-passed version of the bill.

House and Senate committees have taken up bills on a range of immigration topics. Measures on temporary and permanent immigration that have received committee action include the Ensuring American Global Leadership and Engagement Act (H.R. 3524) and the Equal Access to Green cards for Legal Employment Act of 2022 (H.R. 3648), both known as the EAGLE Act. Border security is another subject of legislation receiving action, with committees acting on the Non-Intrusive Inspection Expansion Act (S. 4572) and the DHS Illicit Cross-Border Tunnel Defense Act (H.R. 4209). Bills concerning the immigration courts (such as the Real Courts, Rule of Law Act of 2022 [H.R. 6577]) and removal of noncitizens from the United States (such as the Veteran Service Recognition Act [H.R. 7946]) have also received committee action.

This report is organized by immigration topic. The topics included are based on the provisions in the immigration-related bills that have seen congressional action as of the cover date of this report.[2]

Nonimmigrant and Immigrant Visas

The Immigration and Nationality Act (INA) provides for the admission of aliens[3] (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 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*).[4]

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.[5] Legislation has been considered in the 117th Congress that relates to existing nonimmigrant visas or proposes to establish new visas.

The Department of State (DOS), 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-1B, 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

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

[3] *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)).

[4] 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.

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

inadmissibility (which are described in the "INA Grounds of Inadmissibility" section). 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.[6] 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.[7]

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.[8] In 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."[9]

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).[10] Aimed at addressing this concern, the Advancing Mutual Interests and Growing Our Success Act (AMIGOS Act; H.R. 2571 and H.R. 7900 (Division E, §5802), both 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. These bills 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-

[6] U.S. Department of State (DOS), *Report of the Visa Office 2020*, Table XIX.

[7] 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*.

[8] 8 C.F.R. §214.2(e)(6). For the current list of countries that qualify, see DOS, "Treaty Countries," https://travel.state.gov/content/visas/en/fees/treaty.html.

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

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

1 visas or status even if they intended to seek LPR status. The Senate-passed version of H.R. 4521 does not include these provisions.

To be eligible for F-1 nonimmigrant status, applicants must demonstrate that they have a residence in their home country and have no intention of abandoning that residence. Section 5880 of H.R. 7900, as passed by the House, would waive this requirement for F-1 applicants from Afghanistan for a period of two years.

Specialty Occupation Workers (H-1B Visas)

The H category is the major nonimmigrant visa category for temporary workers. Current law provides for the admission of temporary workers on H-1B visas to perform services in *specialty occupations*.[11] Although H-1B employees may work in a variety of fields, the majority are hired to work in STEM occupations, with about two-thirds of all H-1Bs working in computer-related occupations. The H-1B visa program is governed by provisions in the INA and by regulations issued by DHS and DOL.[12] It is subject to an annual numerical cap of 65,000.[13]

Policymakers have raised questions about whether H-1B workers may be placing downward pressure on U.S. workers' wages and benefits as well as discouraging or displacing U.S. students in STEM fields. Several provisions in H.R. 3648, as reported by the House Judiciary Committee, aim to address these concerns by making changes to employer requirements and DOL's authority to investigate and enforce compliance. The additional employer requirements include advertising new H-1B positions on a public, searchable DOL website; documenting the methodology used to determine the prevailing wage level for an H-1B employee; attesting that the position has not been advertised as open only to H-1B nonimmigrants or that H-1B nonimmigrants are preferred; and paying a processing fee to DOL. The bill also would prohibit certain employers from hiring H-1B workers if more than half of their U.S. workforce consists of H-1B or L-1 nonimmigrants.[14]

In addition, H.R. 3648 would strengthen H-1B program enforcement by, for example, expanding whistleblower protections, requiring USCIS to share with DOL information about employer noncompliance with program requirements, expanding DOL authority to investigate program abuse, increasing DOL audits of H-1B employers, and increasing monetary penalties for program violations by employers.

Agricultural Workers (H-2A Visas)

Agricultural workers may enter the United States on H-2A visas. This visa allows for the temporary admission of foreign workers to the United States to perform agricultural labor of a

[11] The INA defines a *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." INA §214(i)(1) (8 U.S.C. §1184(i)(1)).

[12] For more information on H-1B visas, see CRS Report R47159, *Temporary Professional Foreign Workers: Background, Trends, and Policy Issues*.

[13] INA §214(g)(1)(A) (8 U.S.C. §1184(g)(1)(A)). Most H-1B workers are not subject to the annual numerical limits because they are extending their status or they work for universities or nonprofit research or government research facilities that are exempt from the cap. Each year, up to 20,000 H-1B workers with a master's or higher degree from a U.S. university are also exempted from the cap.

[14] The L-1 visa allows a U.S. employer to transfer executives, managers, or employees with specialized knowledge from affiliated foreign offices to offices in the United States. For more information, see CRS Report R47159, *Temporary Professional Foreign Workers: Background, Trends, and Policy Issues*.

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.[15]

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 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.)

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.[16] 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. P.L. 117-103 (Division O, §204) authorized 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 could not be met by U.S. workers. Congress has enacted analogous provisions for each fiscal year since FY2017.[17] P.L. 117-180 (Division A, §101(6)) extends this H-2B authority for the duration of the continuing resolution.

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

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

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

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 (FMGs).[18] 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."[19]

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.[20] Bills receiving Senate action in the 117th Congress—Senate-passed S. 1260; Senate-passed H.R. 4521; and S. 1351, as ordered to be reported by the Senate Homeland Security and Governmental Affairs Committee—seek to address this issue. Specifically, Section 4497 of S. 1260, Section 4497 of Senate-passed H.R. 4521, 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." The House-passed version of H.R. 4521 does not include this language.

Waivers for Foreign Medical Graduates

FMGs who enter the United States on J visas to receive graduate medical education and training are subject to a foreign residency requirement. They must return to their home countries for at least two years after completing their education or training before they can apply for certain other nonimmigrant visas or LPR status, unless they are granted a waiver of this requirement. Under a temporary program, known as the Conrad State Program or the Conrad 30 Program, states are able to request waivers on behalf of FMGs who agree to work in medically underserved areas for at least three years. Established in 1994 by P.L. 103-416, it initially applied to aliens who acquired J status before June 1, 1996, and has been regularly extended. P.L. 117-103 (Division O, §203) extended the Conrad State Program through the end of FY2022. P.L. 117-180 (Division A, §101(6)) extends this program for the duration of the continuing resolution.

Tourists and Other Visitors

The global COVID-19 pandemic sharply reduced foreign tourism to the United States in 2020 and 2021, as countries discouraged international travel and DOS suspended the processing of visa applications.[21] In order to help the travel and tourism sectors recover, Section 105 of the Omnibus Travel and Tourism Act of 2021 (S. 3375), as reported by the Senate Committee on Commerce, Science, and Transportation, would require the Assistant Secretary of Commerce for Travel and Tourism (a new position that would be created by the bill), in consultation with the Secretary of

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

[19] 22 C.F.R. §62.1.

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

[21] For more information, see CRS Report R46300, *Adding Countries to the Visa Waiver Program: Effects on National Security and Tourism*.

State and the Secretary of Homeland Security, to explore strategies for improving the processing of visitor visas.[22]

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, which may include architecture, engineering, education, accounting, law, and the arts. The main visa class for specialty occupation workers is H-1B, as discussed above. 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).[23]

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. The Senate-passed version of H.R. 4521 does not include these provisions.

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 the bill 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. 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. Under House-passed 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). The Senate-passed version of H.R. 4521 does not include these provisions.

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.[24] LPRs can live and work permanently in the United States and can become U.S. citizens through the naturalization process.

[22] This bill refers to "visitor visas," but does not specify which visa categories would be covered.

[23] For more information on these nonimmigrant visa categories, see CRS Report R47159, *Temporary Professional Foreign Workers: Background, Trends, and Policy Issues*.

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

Prospective immigrants must maneuver a multistep process through federal departments and agencies to become LPRs. First, a petition for LPR status is 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. A foreign national can receive an immigrant visa or apply to adjust status only if an immigrant visa 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[25] and (2) family-sponsored preference immigrants.[26]

Much of the legislation in the 117th Congress on permanent admissions concerns employment-based immigration, which occurs through five numerically limited preference categories, three of which are based on professional accomplishment and ability. The first preference category (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 (EB-4) includes various "special immigrants," and the fifth (EB-5) includes immigrant investors.[27] (The EB-4 and EB-5 categories are discussed in separate sections below.)

Statutory Numerical Limits and the Per-Country Ceiling

There are statutory limits on the number of family-sponsored preference and employment-based immigrant visas that may be issued each fiscal year.[28] 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. (Immediate relatives of U.S. citizens are not subject to numerical limitations or the per-country ceiling.) The per-country 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.

[25] 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.

[26] 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*.

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

[28] 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*.

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. This would allow these petitioners to be treated like family-sponsored immediate relatives, eliminating any wait time due to 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. The Senate-passed version of H.R. 4521 does not include these provisions.

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 treated as if it were a separate country from the PRC for purposes of the 7% per-country ceiling on immigrant visas.[29] The Senate-passed version of H.R. 4521 does not include this provision.

H.R. 3648, as reported by the House Judiciary Committee, would eliminate the 7% per-country ceiling for the employment-based immigrant categories over a nine-year transition period. After the transition period, the bill would allocate employment-based visas to prospective immigrants in each category by application date on a first-come, first-served basis without regard to country of origin. However, it would not reduce the total size of the green card backlog because it would not increase the annual limit for employment-based green cards. H.R. 3648 would also increase the per-country cap to 15% for family-sponsored immigrant categories.

Recapture of Unused 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.[30] 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 (often 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.[31] 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.[32]

The 117th Congress has considered related legislation. Section 60002 of H.R. 5376, as passed by the House, would amend the INA to make employment-based visa numbers that are unused in a

[29] 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.

[30] 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).

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

[32] 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.

fiscal year available for use in the following fiscal year, as currently occurs for most unused family-sponsored visa numbers.[33] 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.[34] The enacted version of H.R. 5376 (P.L. 117-169) does not include these provisions.

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.[35] 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.

Employment-Based Visas for Agricultural Workers

Under the employment-based immigration system, agricultural workers have 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). 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. 3648, as reported by the House Judiciary Committee, would allow prospective EB-1, EB-2, and EB-3 immigrants in the employment-based queue who are residing in the United States and whose immigrant petitions had been approved for at least two years to file to adjust status even if

[33] 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).

[34] For additional information, see ibid.

[35] 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.

immigrant visa numbers were not immediately available. 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.

Section 60003 of H.R. 5376, as passed by the House, would allow prospective family-sponsored and employment-based immigrants to file to adjust to LPR status even if an immigrant visa number were not immediately available. Filers would have to pay a supplemental fee of $1,500 (plus $250 for every adjusting family member).The enacted version of H.R. 5376 (P.L. 117-169) does not include these provisions.

Section 60003 of House-passed H.R. 5376 would further 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), and $50,000 for EB-5 immigrant investors (see the "Immigrant Investor Visas" section). The enacted version of H.R. 5376 (P.L. 117-169) does not include these provisions.

Special Immigrant Visas

The EB-4 category for special immigrants encompasses a hodgepodge of classifications, many of which have a humanitarian and/or public service element.[36] They include classifications for persons declared dependent on a juvenile court in the United States, graduates of foreign medical schools licensed to practice medicine in the United States, and international broadcasters, among others.

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.[37] The 117th Congress has acted on legislation to make changes to these two temporary programs, to extend a special immigrant program for religious workers, and to establish new special immigrant programs.

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.[38] P.L. 117-31 makes various changes to this program. Section 401 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 Chief of Mission approval from December 2022 to December 2023. Section 401 also amends the program's eligibility

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

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

[38] For information and data on application processing under this program as of June 30, 2022, see *Report to Congress on Posting of the Afghan Special Immigrant Visa Quarterly Report on the Department of State's Website*, https://travel.state.gov/content/dam/visas/SIVs/Afghan-Public-Quarterly-Report-Q3-July-2022.pdf. As of June 30, 2022, there were 15,343 visas (of the 34,500 total) available for issuance to principal applicants (spouses and children are not subject to this cap).

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. Section 403(b) amends the statutory provisions on surviving spouses and children of deceased applicants to expand their access to the program.

In an effort to expedite admissions to the United States under this program, Section 402 of P.L. 117-31 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.

Other bills receiving action also address some of these same issues. For example, language to waive the medical examination was also passed by the House in the stand-alone Honoring Our Promises through Expedition (HOPE) for Afghan SIVs Act of 2021 (H.R. 3385). The Averting Loss of Life and Injury by Expediting SIVs Act of 2021 (H.R. 3985), as passed by the House, includes provisions to increase the number of available SIVs and to expand access to SIVs for surviving spouses and children. This bill also proposes to eliminate the requirement that SIV applicants show they have experienced a serious threat as a result of their employment and to broaden qualifying employment to encompass work through a U.S. government-funded cooperative agreement or grant.

House-passed H.R. 7900 includes a number of provisions related to Afghan SIV applicants. This bill would further amend some of the SIV program changes made by P.L. 117-31. Section 1211 of H.R. 7900 (in Division A of the bill) would extend the application deadline for an additional year, to December 2024. Section 5801 (in Division E) would add an exception to the one-year work requirement for principal applicants who are wounded or seriously injured in the course of their work and as a result cannot continue their employment. For such persons, the required work period would be the period until they received the injury. Other provisions in Division E would direct the Secretary of State, in coordination with the heads of other federal departments and agencies, to increase consular staff at U.S. embassies and take other steps to improve support for Afghan SIV applicants (§5850), and would direct the inspector generals of DHS and DOS, in coordination with others, to conduct a review of the Afghan SIV programs, including an assessment of the systems, staffing, and policies employed to provide SIVs to eligible individuals (§5675).

More broadly, to address "well documented administrative issues with current and former Special Immigrant Visa programs," such as employment verification, H.R. 7900 (Division A, §1046) would direct the Secretary of Defense to establish a centralized database that includes all foreign nationals working for the U.S. government "or any contractor or subcontractor (at any tier) of the Department of Defense, the Department of State, or any other agency or instrumentality of the Executive branch in a theater of combat operations."

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 Senate-passed version of H.R. 4521 does not include these provisions.

Temporary Program for Iraqi Nationals

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 June 30, 2022, there were 237 visas remaining for issuance to principal applicants.[39] 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.

Temporary Program for Religious Workers

The existing special immigrant category for religious workers applies to ministers or individuals engaged in and qualified for a religious occupation or vocation according to the denomination's standards, as specified in DHS regulations. While the statutory provision for the admission of ministers is permanent, the provision admitting other religious workers has always had a sunset date. P.L. 117-103 (Division O, §202) extended the special immigrant program for non-minister religious workers through the end of FY2022. P.L. 117-180 (Division A, §101(6)) extends this program for the duration of the continuing resolution.

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. These bills 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 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[40] 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, have a bachelor's degree or higher degree, and meet other requirements eligible for special immigrant status. 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. The Senate-passed version of H.R. 4521 does not include these provisions.

Proposed Program for Essential Scientists and Technical Experts

House-passed H.R. 4521 (§80401) and House-passed H.R. 7900 (Division E, §5923) 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 (DOD) 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 FY2022 through FY2030, and 100 for subsequent fiscal years. The

[39] *Report to Congress on the Process by Which Applications for Special Immigrant Visas under Special Immigrant Status for Certain Iraqis Are Processed,* https://travel.state.gov/content/dam/visas/SIVs/Iraqi-Public-Quarterly-Report-Q3-July-2022.pdf.

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

spouse and children of the principal applicant would also be eligible for special immigrant status. The Senate-passed version of H.R. 4521 does not include these provisions.

Immigrant Investor Visas

The EB-5 Immigrant Investor Program provides lawful permanent residence to qualified foreign investors (and their spouses and children) who invest in a new commercial enterprise (NCE) in the United States and create at least 10 jobs. Investors who choose a *targeted employment area* (TEA)—a rural area or area of high unemployment—qualify for reduced investment amounts. EB-5 has two program pathways. In the standard pathway, foreign nationals invest in an enterprise that uses the capital for direct job creation. The second pathway, the Regional Center Program, allows investors to pool investments into an NCE. These investments are typically used to fund an independent job-creating enterprise; indirect jobs may count toward the jobs requirement.[41] While the standard pathway is a permanent program, the Regional Center Program was initially authorized as a pilot program and must be regularly reauthorized.

Division BB of P.L. 117-103, entitled the EB-5 Reform and Integrity Act of 2022, increases investment requirements for the EB-5 program from $1 million, or $500,000 in a TEA, to $1,050,000, or $800,000 in a TEA or infrastructure project, to be adjusted for inflation every five years. It reauthorizes the Regional Center Program—which, in 2021, had lapsed for nearly nine months—through September 30, 2027, and codifies it in the INA. Among its other provisions, the legislation specifies parameters for TEA designation; establishes new set-asides for visas for investments in rural areas, high-unemployment areas, and infrastructure projects; and implements new fees. It also sets new requirements for DHS oversight of regional centers, including the establishment of a fee-funded "Integrity Fund" to be used for program monitoring, investigations and fraud detection, audits, and ensuring compliance.[42]

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.[43] 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, including H.R. 3524, as ordered to be reported by the House Foreign Affairs Committee, and H.R. 4521, as passed by the House. As noted, H.R. 3524 (§303(e)) and House-passed H.R. 4521 (§30303(e)) would require that for five years Hong Kong be treated as if it were a separate country from the PRC. (The Senate-passed version of H.R. 4521 does not include this provision.) 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

[41] For more information on the Regional Center Program, see CRS In Focus IF11848, *EB-5 Immigrant Investor Regional Center Program*.

[42] For more information, see CRS Insight IN11989, *Legislative Changes to the EB-5 Immigrant Investor Program*.

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

13936 of July 14, 2020, required that Hong Kong be treated as part of the PRC.[44] One effect of the provisions in H.R. 3524 and House-passed H.R. 4521, if enacted, would be that residents of Hong Kong would again be eligible for DVs.

Recapture of Unused 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 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, as passed by the House, 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[45] issued by then-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.[46] The enacted version of H.R. 5376 (P.L. 117-169) does not include these provisions.

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 EB-5 investor visas, discussed above.) The Senate-passed version of H.R. 4521 does not include these provisions.

Other Visa-Related Provisions

Aging Out Protections

Aging out refers to the change in a foreign national's eligibility for an immigration benefit when he or she reaches a certain age. In the case of family-based immigration, this is particularly noticeable because of the different treatment of minor children of U.S. citizens and minor children of LPRs. Minor children of U.S. citizens are protected from aging out by the Child

[44] 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.

[45] 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)*.

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

Status Protection Act of 2002 (CSPA, P.L. 107-208), which provides them with durable status protection. That protection means that for immigration purposes, age is recorded as of the date an immigrant petition is filed and remains in effect (or *freezes*) regardless of the length of time needed to obtain lawful permanent residence. Minor children being sponsored by their LPR parents lack durable status protection. If they reach age 21 after a petition has been filed for them but before they receive LPR status, they automatically age out and must seek LPR status through other immigrant pathways (e.g., family-based immigration, employment-based immigration, diversity visa). This often results in a substantially longer waiting time to obtain LPR status.

For children of long-term nonimmigrants with approved immigrant petitions, aging out means losing their immigration status entirely. The aging out of this population—sometimes referred to as *legal Dreamers*—has received increased attention in recent years (see the "Children of Long-Term Nonimmigrants" section).

Section 5881(a) of H.R. 7900, as passed by the House, would add language to the INA to prevent aging out for dependent children petitioning or applying under specified immigrant and nonimmigrant categories. The new provisions would take effect retroactively as if they had been included in the CSPA. Individuals whose petitions or applications had been denied since the CSPA's enactment because they aged out of status could file a motion to reopen their cases if (1) the petition or application would have been approved had the new provisions been in effect when filed, (2) the individual seeking relief was in the United States at the time the underlying petition or application was filed, and (3) the motion was filed within two years of H.R. 7900's enactment. Immigrant visas granted from such motions would be exempt from statutory numerical limits.

Visa Waiver Programs

The Visa Waiver Program (VWP) allows citizens of 40 countries to visit the United States for up to three months without a nonimmigrant visa.[47] Before traveling to the United States, VWP travelers must submit biographical information through DHS's Electronic System for Travel Authorization (ESTA). There is a $17 ESTA fee, part of which covers the costs of administering ESTA and part of which is for travel promotion.[48] P.L. 117-103 (Division EE, §101) extends the Secretary of Homeland Security's authority to collect ESTA fees until October 31, 2028 (the previous expiration date was September 30, 2027).

As noted above, Section 105 of S. 3375, as reported by the Senate Committee on Commerce, Science, and Transportation, would establish the new position of Assistant Secretary of Commerce for Travel and Tourism (see the "Tourists and Other Visitors" section). Section 105 also would require the assistant secretary to provide recommendations to utilize and expand the VWP.

In addition to the main VWP, there is a Guam-Commonwealth of the Northern Mariana Islands (CNMI) VWP that allows individuals from 12 participating countries/geographic areas[49] to enter these U.S. territories for up to 45 days for the purposes of business or pleasure. The Virgin Islands Visa Waiver Act of 2022 (H.R. 5460) would create a similar VWP for the U.S. Virgin Islands

[47] For additional information, see CRS Report RL32221, *Visa Waiver Program*; and CRS Report R46300, *Adding Countries to the Visa Waiver Program: Effects on National Security and Tourism*.

[48] This travel promotion fee was established in the Travel Promotion Act of 2009 (Section 9 of P.L. 111-145). For more information, see CRS Report R46300, *Adding Countries to the Visa Waiver Program: Effects on National Security and Tourism*.

[49] The countries are Australia, Brunei, Japan, Malaysia, Nauru, New Zealand, Papua New Guinea, Republic of Korea, Singapore, and the United Kingdom; the geographic areas are Hong Kong Special Administrative Region (Hong Kong) and Taiwan.

(USVI), another U.S. territory. The bill would require the DHS Secretary first to determine that the USVI has developed an adequate arrival and departure control system and that its participation in the program would not represent a threat to the welfare, safety, or security of the United States or its territories.

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.

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*.[50] 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 FY2023 is 125,000,[51] the same as for FY2022. 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. In March 2022, DHS and the Department of Justice (DOJ) published an interim final rule to amend certain asylum-related procedures.[52] Prior to the rule's May 2022 effective date, the Senate voted on a measure (S.J.Res. 46) providing for congressional disapproval of the rule; the resolution did not pass.[53] (An asylum provision applicable to certain Afghans in the United States is discussed in the "Parole" section.)

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

[51] White House, *Memorandum on Presidential Determination on Refugee Admissions for Fiscal Year 2023*, September 27, 2022, https://www.whitehouse.gov/briefing-room/presidential-actions/2022/09/27/memorandum-on-presidential-determination-on-refugee-admissions-for-fiscal-year-2023/.

[52] DHS and U.S. Department of Justice, Executive Office for Immigration Review, "Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers," 87 *Federal Register* 18078, March 29, 2022.

[53] For information on implementation of this rule, see DHS, U.S. Citizenship and Immigration Services, "FACT SHEET: Implementation of the Credible Fear and Asylum Processing Interim Final Rule," https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/fact-sheet-implementation-of-the-credible-fear-and-asylum-processing-interim-final-rule.

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. The North Korean Human Rights Reauthorization Act of 2022 (S. 4216), as reported by the Senate Committee on Foreign Relations, includes language that would facilitate the resettlement of eligible North Korean refugees in the United States and South Korea.

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.

In August 2021, DOS established a new P-2 group for certain Afghan nationals and their family members (spouses and sons and daughters of any age). According to a DOS fact sheet, this program provides a resettlement opportunity for Afghans "who may be at risk due to their U.S. affiliation but who are not eligible for a Special Immigrant Visa (SIV) because they did not have qualifying employment, or because they have not met the time-in-service requirement to become eligible."[54] Eligible Afghans require a referral to the P-2 program from a U.S. government agency or other qualified entity. Language in House-passed H.R. 7900 (Division E, §5850) would direct the Secretary of State to increase support for referrals (including P-2 referrals) of Afghans to the U.S. refugee program. P.L. 117-43 (§2403) requires the Secretary of State, in consultation with others, to submit a report to Congress on the Afghan P-2 program.

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).[55] The Lautenberg amendment has been regularly extended over the years, although at times there have been lapses between extensions. It was last extended (through the end of FY2022) by P.L. 117-103 (Division K, §7034(l)(5)). The DOS, Foreign Operations, and Related Programs Appropriations Act, 2023 (H.R. 8282), as reported by the House Appropriations Committee, would extend the Lautenberg amendment through the end of FY2023 (§7034(k)(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 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,[56] 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

[54] U.S. Department of State, Office of the Spokesperson, *U.S. Refugee Admissions Program Priority 2 Designation for Afghan Nationals*, August 2, 2021, https://www.state.gov/u-s-refugee-admissions-program-priority-2-designation-for-afghan-nationals/.

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

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

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. The Senate-passed version of H.R. 4521 does not include these provisions.

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 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. The Senate-passed version of H.R. 4521 does not include these provisions.

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.[57] As of the cover date of this report, 16 countries are designated for TPS.[58] As of February 16, 2022, approximately 355,000 individuals were protected by TPS. In addition, certain Liberians 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). The Senate-passed version of H.R. 4521 does not include these provisions.

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 the United States."[59] Immigration parole is official permission to enter (if outside the country) and

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

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

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

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.[60]

During the summer of 2021, DHS paroled tens of thousands of Afghan nationals into the United States. P.L. 117-43 (§2502(b)) provides that Afghans paroled into the United States between July 30, 2021, and September 30, 2022, are eligible for the same resettlement assistance and other federal benefits as refugees (certain family members paroled in later were likewise eligible for these benefits). Another provision of P.L. 117-43 (§2502(b)) directs DHS to expedite the adjudication of asylum applications filed by these Afghan parolees. P.L. 117-180 (Division A, §149) amends the language in P.L. 117-43 to provide that Afghans paroled into the United States during the duration of the continuing resolution are also eligible for refugee-like benefits and expedited asylum adjudications.

In April 2022, the Biden Administration announced a new parole program for Ukrainians displaced by the Russian invasion of their country.[61] Through the Uniting for Ukraine program, Ukrainians outside the United States can be granted immigration parole for up to two years. To participate in the program, the beneficiaries must have a financial supporter in the United States. P.L. 117-128 makes Ukrainians paroled into the United States during specified periods generally eligible for the same resettlement assistance and other federal benefits as refugees.

Section 60001 of House-passed H.R. 5376 would direct DHS to grant parole initially for five years or until September 30, 2031 (whichever is earlier) to a 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. The enacted version of H.R. 5376 (P.L. 117-169) does not include these provisions.

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*[62]) 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

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

[61] DHS, "Uniting for Ukraine," https://www.dhs.gov/ukraine.

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

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.

Dreamers

Dreamers have long been seen by many policymakers as a sympathetic subset of the unauthorized immigrant population 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.[63] 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) 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.[64] In many cases, the parents have applied for employment-based green cards (and included their minor children on their applications). However, because of the

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

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

annual numerical limits and 7% per-country ceiling that apply under the permanent immigration system (see the "Family-Sponsored and Employment-Based Immigrants" section), many such prospective immigrants—particularly from major migrant-sending countries such as India and the PRC—must wait decades to receive LPR status.[65] As a result, a significant portion of nonimmigrant children reach age 21 and age out, or lose their immigration status, before they receive permanent status[66] (see the "Aging Out Protections" section).

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 eligible for the LPR pathway for Dreamers described in the preceding section (see the "Treaty Traders and Investors (E-1/E-2 Visas)" and "Specialty Occupation Workers (H-1B Visas)" sections).

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). 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.[67] 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), as passed by the House, 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).

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

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

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

[67] 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.

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.

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 deemed "essential" occupations during the COVID-19 pandemic. S. 747, which was the subject of a Senate hearing, would allow for the adjustment to LPR status of certain noncitizens who performed qualifying work. A qualifying individual's parents, spouse, sons, and daughters[68] 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,"[69] 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[70]), 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

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

[69] 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.

[70] 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 October 13, 2022.

(indigent), alien smuggling, lack of entry documentation, and unlawful presence in the United States, among others.[71] The related INA grounds of deportability are the grounds upon which foreign nationals can be removed from the United States.[72]

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).

Senate-passed S. 1260 and Senate-passed H.R. 4521 include language to restrict the acquisition of emerging technologies by certain aliens. Under Section 4495 of each 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." Both bills also include 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). The House-passed version of H.R. 4521 does not include any of these provisions.

Border Enforcement and Security

DHS's U.S. Customs and Border Protection (CBP) is responsible for protecting U.S. international land borders and the coastal shoreline. Operationally, border security includes controlling the 328 official air, land, and sea ports of entry (POEs) through which legitimate travelers and commerce enter the country and patrolling the nation's land and maritime borders to prevent unlawful entries of people and goods.

CBP uses Non-Intrusive Inspection (NII) technology to inspect vehicles and cargo at POEs for contraband as well as humans being smuggled, while limiting the impact of such inspections on lawful commerce and travel. This technology is designed to improve the efficiency and effectiveness of inspections without CBP having to do physical inspections. The Non-Intrusive Inspection Expansion Act (S. 4572), as ordered to be reported by the Senate Committee on Homeland Security and Governmental Affairs, would require CBP to actively implement plans to incrementally increase to 100% the rate of scanning of vehicles, consistent with the Securing America's Ports Act (P.L. 116-299), by using past and future congressional appropriations for NII. By FY2024, the bill would require CBP to scan not fewer than 40% of passenger vehicles and 90% of commercial vehicles entering through U.S. land POEs.

S. 3903, as reported by the Senate Committee on Homeland Security and Governmental Affairs, would require the CBP Commissioner to establish procedures for conducting maintenance and repair projects at POEs costing $300,000 or less, provided that they involve existing infrastructure, property, and capital.

[71] INA §212(a) (8 U.S.C. §1182(a)).

[72] INA §237 (8 U.S.C. §1227).

Another bill, the DHS Illicit Cross-Border Tunnel Defense Act (H.R. 4209), as passed by the House and as ordered to be reported by Senate Homeland Security and Governmental Affairs 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.

Immigration Courts and Removals

Immigration courts adjudicate cases according to immigration laws enumerated in the INA.[73] The most common immigration court proceedings are removal proceedings under INA Section 240, which commence when a noncitizen is charged with an immigration violation by DHS. Noncitizens may be removable (deportable) based on grounds of inadmissibility or deportability (see the "INA Grounds of Inadmissibility" section).

Immigration courts and the Board of Immigration Appeals (appellate component) are within the Executive Office for Immigration Review (EOIR), which is part of DOJ. Immigration judges (IJs) and appellate judges are attorneys appointed by the Attorney General; they are career employees with no fixed terms. The Real Courts, Rule of Law Act of 2022 (H.R. 6577), as ordered to be reported by the House Judiciary Committee, would establish the United States Immigration Courts under Article I of the Constitution (legislative powers), composed of a trial division, appellate division, and administrative division. The Immigration Courts would become independent of the executive branch during a four-year transition period. Appellate judges would be appointed by the President "by and with the advice and consent of the Senate." The appellate division would appoint immigration trial judges to a trial division. H.R. 6577 would also specify qualifications for IJs, set terms for appellate and trial judges, set conditions for judges' removal, establish mandatory retirement ages, provide for the appointment of temporary trial judges and court facilities, and allow the Immigration Courts to establish a budget without review by the executive branch, among other provisions.

Veteran Removals

DHS's U.S. Immigration and Customs Enforcement (ICE) is responsible for removing noncitizens from the United States who are subject to a final order of removal. In recent years, some Members of Congress have raised concerns about the removal of noncitizen U.S. veterans.[74] The Veteran Service Recognition Act (H.R. 7946), as ordered to be reported by the House Judiciary Committee, would require DHS to identify and create a system for maintaining information about potentially removable noncitizen veterans. It would require DHS to establish a committee to review cases of noncitizen veterans and certain military family members in removal proceedings. Committee members would recommend to DHS whether those individuals should be removed or granted relief from removal. H.R. 7946 would also allow certain eligible noncitizen veterans who have been issued final orders of removal to obtain LPR status. Similar provisions are included in two related bills that were on the agenda at a March 2022 legislative

[73] For more information about Immigration Courts, see CRS Report R47077, *U.S. Immigration Courts and the Pending Cases Backlog*.

[74] For more information, see CRS In Focus IF12089, *U.S. Citizenship Through Military Service and Options for Military Relatives*.

hearing of the House Veterans' Affairs Committee's Subcommittee on Disability Assistance and Memorial Affairs—the Honoring the Oath Act of 2021 (H.R. 1183) and the Veteran Deportation Prevention and Reform Act (H.R. 1182).

Discretion for the Removal of Certain Relatives of U.S. Citizens

Some Members of Congress have expressed concerns regarding the removal of certain noncitizens when such removal would result in family separation impacting U.S. citizens. The American Families United Act (H.R. 2920), as ordered to be reported by the House Judiciary Committee, would amend the INA to provide discretion to DOJ and DHS, on a case-by-case basis, to decline to pursue the removal of a noncitizen who is the spouse or child of a U.S. citizen if such removal would result in hardship to the individual's U.S. citizen spouse, parent, or child.

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.[75]

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 DOD provide noncitizen members of the Armed Forces with notice of their options for naturalization.

H.R. 7946, as ordered to be reported by the House Judiciary Committee, would require DHS and DOD to implement a naturalization program for noncitizens on active duty and their spouses and minor children. It would also amend the INA to allow noncitizen servicemembers to qualify for expedited naturalization during peacetime within one year after the termination of service, instead of six months.[76] H.R. 1182 and H.R. 1183, which were among the subjects of a House Veterans' Affairs subcommittee hearing, contain similar provisions to implement a naturalization program.

Automatic Citizenship for Children Born Abroad

The INA provides for the automatic acquisition of U.S. citizenship by certain children born outside the United States who are born to or adopted by U.S. citizen parent(s). Under these provisions, children may acquire U.S. citizenship either at birth or after birth and before age 18.[77]

[75] 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*.

[76] INA §328 (8 U.S.C. §1439).

[77] For more information, see CRS Report R47223, *U.S. Citizenship for Children Born Abroad: In Brief*.

Under current law, a child born to one U.S. citizen parent and one alien parent acquires citizenship automatically at birth if the U.S. citizen parent was physically present in the United States or one of its outlying possessions for a total of five years prior to the child's birth, including at least two years of physical presence after the parent's 14th birthday.[78] H.R. 2920, as ordered to be reported by the House Judiciary Committee, would amend the law to not specify any required time period or age for the U.S. citizen parent's U.S. physical presence prior to the child's birth.

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 born on or after February 28, 1983. Section 80308 of House-passed H.R. 4521 would amend this 2000 law so that any eligible adoptee who meets the requirements for U.S. citizenship before age 18 may be granted citizenship, including those who were born on or before February 27, 1983. The Senate-passed version of H.R. 4521 does not include these provisions.

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 include Global Entry, Secure Electronic Network for Travelers Rapid Inspection (SENTRI), and NEXUS (not an acronym). They are open to U.S. citizens, LPRs, and, depending on the program, certain foreign nationals.[79]

Section 6416 of P.L. 117-81 requires the Comptroller General of the United States to conduct a review of DHS trusted traveler programs. Section 6417 addresses cases in which an individual's enrollment in a trusted traveler program is revoked in error. In such cases, this law directs 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.[80]

Another related provision is included in Section 105 of S. 3375, as reported by the Senate Committee on Commerce, Science, and Transportation. Section 105 would require the Assistant Secretary of Commerce for Travel and Tourism to provide recommendations to utilize and expand the "Trusted Traveler Program."[81]

Employment Opportunities for the Foreign-Born Born Population

Barriers to employment faced by foreign-born workers in the United States have gained attention in recent years.[82] Of particular interest are individuals who obtained professional credentials

[78] INA §301(g) (8 U.S.C. §1401(g)).

[79] Each program has its own eligibility requirements For additional information, see CRS Report R46783, *Trusted Traveler Programs*.

[80] These provisions are also in House-passed H.R. 473.

[81] The bill does not specify which program. Section 105 of S. 3375 would similarly direct the Assistant Secretary to provide recommendations to utilize and expand the biometric entry/exit system. This system, which collects records of noncitizen arrivals to and departures from the United States, is required under Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of P.L. 104-208; 8 U.S.C. §1221 note).

[82] See, for example, Neeta P. Fogg and Paul E. Harrington, *Labor Market Underutilization Problems among College-*

abroad, especially in health care and other in-demand fields, and face licensing or other obstacles to utilizing their training in the U.S. labor market. The Bridging the Gap for New Americans Act (P.L. 117-210) requires the Secretary of Labor, in coordination with several other applicable agencies, to "conduct a study of the factors affecting employment opportunities in the United States for applicable immigrants and refugees who have professional credentials that were obtained in a country other than the United States." The study would also include policy recommendations to enable foreign-trained professionals to better use their skills in the U.S. labor market.

ICE Special Agents (Shadow Wolves)

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). The Shadow Wolves Enhancement Act (P.L. 117-113) authorizes HSI to reclassify officers assigned to this unit (commonly known as *Shadow Wolves*) as ICE special agents once they complete certain required training. The law also mandates a report from the DHS Secretary that outlines a strategy for retaining existing Shadow Wolf officers and recruiting new officers, and expanding the classification to comparable units with the approval and consent of the appropriate Indian tribe.

Machine-Readable Visa Documentation

Concerns about fraud and illegal activity in connection with nonimmigrant visas for students and researchers have led to recommendations to require all documents supporting visa applications to be easily accessible.[83] Senate-passed S. 1260 (§4496), Senate-passed H.R. 4521, and S. 1351 (§5), as ordered to be reported by the Senate Homeland Security and Governmental Affairs Committee, include requirements along these lines. These provisions would require DOS to make visa applications and supporting materials available in a machine-readable format to assist in identifying visa fraud, conducting law enforcement activities, and determining visa eligibility (also see the "INA Grounds of Inadmissibility" section). The House-passed version of H.R. 4521 does not include this language.

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.

Educated Immigrants in the United States, Center for Labor Markets and Policy, Drexel University, 2013; and Jeanne Batalova and Michael Fix, *Leaving Money on the Table: The Persistence of Brain Waste among College-Educated Immigrants*, Migration Policy Institute, June 2021.

[83] 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. 75-82.

E-Verify Program

Under the INA, it is unlawful for an employer knowingly to hire, recruit or refer for a fee, or continue to employ an alien who is not authorized to be so employed. Employers are required to participate in an employment eligibility verification process in which they examine documents presented by new hires to verify identity and work eligibility, and complete and retain verification forms (known as I-9 forms). They also may participate in the USCIS-administered E-Verify electronic employment eligibility verification system. E-Verify is largely voluntary but has some mandatory participants, such as certain federal contractors. Participants in E-Verify electronically verify new hires' employment authorization through Social Security Administration and, if necessary, DHS databases. E-Verify is a temporary program. P.L. 117-103 (Division O, §201) extended E-Verify through the end of FY2022. P.L. 117-180 (Division A, §101(6)) extends the program for the duration of the continuing resolution.

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[84] 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[85] 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. POEs between foreign nationals seeking U.S. entry and CBP officers, 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.[86]

[84] INA §212(f) (8 U.S.C. §1182(f)).

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

[86] 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*.

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. The enacted version of H.R. 5376 (P.L. 117-169) does not include these provisions.

Author Information

Andorra Bruno, Coordinator
Specialist in Immigration Policy

Audrey Singer
Specialist in Immigration Policy

William A. Kandel
Specialist in Immigration Policy

Holly Straut-Eppsteiner
Analyst in Immigration Policy

Abigail F. Kolker
Analyst in Immigration Policy

Jill H. Wilson
Analyst in Immigration Policy

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