

# Is Immigration Reform Inevitable?

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Recently, the subject of Immigration Reform has been making headlines with increasing frequency. However, many Americans are asking why, in the aftermath of September 11, 2001, would we even consider any sort of legalization program within U.S. immigration law. The short answer is that, with regard to both homeland security and our economy, it is in the best interest of our country. In fact, it is necessary.

Most of us remember Section 245(i), which, between December 20, 2000 and April 30, 2001, allowed otherwise ineligible undocumented aliens in the United States to start the sometimes long process toward legalization. By way of letter to Congress dated May 1, 2001, President Bush expressed his intention to make 245(i) permanent. Then, during August and the beginning September 2001 Congress was in fact working on just that.

However, when our nation was attacked on September 11, the issue of Legalization was dropped, and our government properly turned its attention to legislation which addressed our national security. However, the same issues that justified this administration's desire for immigration reform in 2001 did not evaporate. Rather, they have steadily increased in urgency. Although separate and distinct, the two go hand in hand with equal significance; homeland security and our economy.

This Administration and Congress have increased governmental investigative powers with the enactment of the Patriot Act and related legislation. They have tightened our ports of entry with increased technology such as digital fingerprinting of entrants, and vastly increased criminal and terrorist databases. Although many reasonably believe that legislation such as the Patriot Act has undermined and eroded our personal liberties, it cannot be disputed that quite a number of terrorist plots against the United States have been foiled since September 11, 2001.

However, such steps have been most effective against those attempting to enter or legalize in the United States. Those left are the 12 to 15 million individuals who are present in the United States with no avenue toward legalization. We know that they are not going to leave voluntarily as their numbers continue to increase. We also know that they are responsible for performing much of the labor that American Citizens are essentially not interested in doing.

But who are they and how do we document them? This administration is acutely concerned about such a large segment of our population and workforce, about whom very little is known. Moreover, with the soon-to-be-realized mass retirement of the Baby boom generation, virtually every study confirms that the United States is headed for a severe labor shortage. That being understood by all, even if it were logistically possible, mass removal/deportation is simply not an option for our nation. So what options remain? Legalization.

Presently there are number of immigration reform bills in Congress, all of which address to varying degrees three basic plans; enforcement, temporary relief, and permanent relief.

No matter what the final immigration reform legislation looks like, it will surely and properly include strong enforcement measures, as our continued failure to take control of our borders will certainly continue to undermine our homeland security and render meaningless whatever legalization/documentation measures we ultimately implement. As a result, we can expect significant increases in enforcement spending and border control.

However, the issues of temporary and permanent benefits are not nearly as clear-cut as enforcement.

For example, since permanent relief, a 245(i) type of program, would document the undocumented and secure an adequate labor force while raising vast funds for the Federal Government through the payment of penalties and filing fees, why is there even talk of temporary worker programs? Politics.

A 245(i) type of legalization program would undeniably constitute "amnesty", which, when uttered by any politician is the equivalent of political suicide. However, by implementing a temporary worker program, which, such as the working visas we have in place presently, does not lead to lawful permanent resident status, the word "amnesty" can easily and justifiably be avoided. After all, a program that ends after three or six years without affording the alien lawful permanent residence, is clearly not "amnesty".

So why not just have a temporary worker program? Business. U.S. businesses are understandably opposed to having their skilled and trained workers required to leave the United States, and their companies, every three or six years. This is especially true in the context of our upcoming labor shortage. As a result, permanent relief must be part of the reform package. Moreover, in the event that the ultra conservative interests are able to prevent the inclusion of permanent relief provisions in this immigration reform package, before the expiration of any three or six-year temporary program, permanent relief will be enacted.

Furthermore, it appears that the foregoing has been clearly understood by this Administration and Congress since well before President Bush's Immigration reform Statement of January 7, 2004. In that statement, the President spoke of a Temporary Worker Program that would not be an "amnesty", but, as he continued, would not preclude aliens from seeking lawful permanent residence through other legal channels. Translation: permanent relief.

Additionally, earlier this year the REAL ID ACT was enacted. Among many other things, it made it illegal for any state to issue drivers licenses to individuals unless they can prove that they have legal status in the United States. At that time, eleven states were issuing licenses without requiring such proofs.

Initially, the President was opposed to the READ ID ACT, as it essentially creates a national identification card. And, although those in favor if it say it does not do so as each state would have its own digital database of all its licensed drivers, the fact is that each state's database is accessible by every other state and the Federal Government, resulting in a national identification card.

However, late in the game, the President became a supporter of the REAL ID ACT. Why?

When the REAL ID ACT is fully implemented, no undocumented alien will be able to get a drivers license in any state. He or she will not be able legally drive, open bank accounts, deposit paychecks, transfer funds, travel by air, or by bus or train for interstate trips. As it is not in our national interest to either deport our workforce, or to deny our workforce the ability to function within our society, a legalization program is the only possible remedy. It is however in our national interest to deny such abilities to our criminal and terrorist undocumented population.

To be sure, in order to legalize under any program every individual will be required to undergo extensive CIA, FBI and international security checks. Those who pass such checks will be permitted to legalize as they become documented. However, those who are felons, have terrorist ties, or are otherwise ineligible to become legal, will probably not participate in the program, or, if they do, will be deported. In the end, we will have a legally documented work force of individuals who have cleared deep security, background and criminal checks, with a far smaller group of criminal and/or terrorist undocumented individuals who will be essentially unable to function in our society due to their inability to secure legal identification, travel, or to open bank accounts and the like.

Finally, any legalization program will require the applicants to pay a significant penalty (probably \$2,000.00 each), in addition to the filing fees for applications that they could not otherwise file. Multiply those amounts by the number of applicants, and the amount of revenue raised will be in the trillions of dollars.

So, considering the issues of homeland security, border control, maintenance of an adequate labor force, economic prosperity, and revenues to be raised, it appears that, in the absence of another catastrophic attack against the United States, significant and comprehensive immigration reform is inevitable. Joseph G. Cella, Esq. is the founder of Cella & Associates, LLC, a New Jersey-based law firm practicing exclusively in matters of US immigration law, Consulate matters, and Deportation Defense. He has lectured to immigration attorneys and professionals in immigration seminars in several countries for the Federal Bar Association, and has been published in a number of publications including the New Jersey Law Journal. <http://www.cella-associates.com>.