Maria Elvira Salazar Legal Immigration Reform Proposal

Section by Section:

Topline: This bill protects the U.S. family-based immigration system, reduces backlogs, provides parity for our legal immigration system, improves employment-based visa opportunities, and streamlines student visa processing.

Table of Contents:

TITLE I—PROTECTING THE FAMILY SYSTEM

Subtitle A—American Families United Act (H2920)

Sec. 101. Findings.

States that the interests of U.S. citizens should be protected by our immigration laws, and the intent of this subtitle is to provide case-by-case discretion to prevent family separation and hardship for U.S. citizens in immigration proceedings.

Sec. 102. Rule of construction.

Clarifies that the discretionary authority provided in the following section will only apply on a case-by-case basis.

Sec. 103. Discretionary authority with respect to removal, deportation, ineligibility, or inadmissibility of citizen family members.

This gives DHS the authority to review specific immigration cases involving U.S. citizens. Specifically, it provides discretionary authority in immigration cases in which the individual is the spouse or child of a U.S. citizen. In these cases, if such an individual has been deemed inadmissible or deportable and this causes hardship for the American citizen that is related to them, the Secretary of Homeland Security may review the case and take one of the following actions: (1) waive grounds of inadmissibility or deportability; (2) decline to issue a notice to appear (NTA) for removal proceedings; (3) decline to reinstate an order of removal; or (4) grant an alien permission to reapply for admission to the United States.

Subtitle B—Temporary Family Visitation Act (H3215)

Sec. 111. Family purpose nonimmigrant visas for relatives of United States citizens and lawful permanent residents seeking to enter the United States temporarily.

This creates a new, 90-day visitor visa that can be used by foreigners to travel to the United States for business, pleasure, or family purposes. In this case, “family purposes” means a visit by a relative for social purposes or other occasions, such as weddings, birthdays, family reunions, or funerals.

This visa is only available to foreign individuals that have family members living in the United States who are U.S. citizens or legal permanent residents. To obtain the visa, the U.S. citizen or legal resident must apply on behalf of their relative and fill out a declaration of support (I-134) stating they will provide full financial support for the visiting individual. Additionally, the visitor must buy traveler health insurance to be approved for this visa, and they are unable to adjust to any other immigration status while in the United States.

To obtain this visa, their foreign individual must be petitioned by their relative who is a U.S. citizen, living in the United States.

Subtitle C—Spouses or Children of an Alien Lawfully Admitted for Permanent Residence Uncapped

Background of Family Preference Categories:

IR: Immediate Relatives of U.S. Citizens

- Includes spouses, minor children, and parents of U.S. citizens.
    - Cap: None

F1-F4 Family Preference Categories: 226,000 Statutory Cap

- F1 Unmarried Adult Children (over 21) of U.S. Citizens
    - Cap: 23,400
- F2 Relatives of Lawful Permanent Residents: 114,200 Statutory Cap
    - F2A: Spouses and Minor Children of LPRs.
        - Cap: 87,900
    - F2B: Unmarried Adult Children of LPRS.
        - Cap: 26,300
- F3 Married Children of U.S. Citizens.
    - Cap: 23,400
- F4 Brothers and Sisters of Adult U.S. Citizens.
    - Cap: 65,000

Sec. 131. Spouses or children of an alien lawfully admitted for permanent residence.

This exempts spouses and minor children of LPR's (lawful permanent residents) from current family preference green card caps set by the Immigration and Nationality Act (INA). It does this by reclassifying the F2A family preference category, which includes spouses and minor children of LPRs, as immediate relatives in IR category. With this change, spouses and minor children of LPRs would be treated as immediate relatives and not be subject to annual family preference number caps.

Sec. 132. Preference Allocation for Family-Sponsored Immigrants.

Since the F2A category would no longer be subject to annual caps under the previous section, this section reassigns those visas. Specifically, the 87,900 annual visas that would normally go spouses and minor children of LPRs (currently F2A category) are reassigned to the F1 family preference category. This increases the F1 visa cap from 23,400 per year to 111,300 per year, and will help reduce the major backlog in the F1 family preference category.

TITLE II—FAIRNESS FOR IMMIGRANTS

Sec. 201. Elimination of backlogs.

This cuts the visa backlog at 10 years, meaning anyone that has been waiting for a legal visa (either family-based or employment-based) for 10 years or more will be provided that visa.

Sec. 202. Per-country caps raised.

This more than doubles the per-country cap set in the Immigration Act of 1990, from 7% to 15%. Under current law, no country can receive more than 7% of the total number of employment-based and family-sponsored preference visas in a given year. This low percentage is causing decades-long backlogs in certain countries with large populations, and this provision will help greatly reduce and eventually eliminate those backlogs when combined with other reforms in this bill.

TITLE III—IMPROVING EMPLOYMENT BASED VISAS

Subtitle A—H-4 Work Authorization Act (H7442)

Sec. 301. Employment authorization for certain alien spouses.

This allows the spouses of H-1B immigrants to automatically be granted work authorization upon receiving their H-4 visa. It removes the requirement for visa holders to apply for a Form I-765, Employment Authorization Document (EAD), which can take considerable time to be approved.

H-4 visas are issued to dependent spouses and children who accompany H-1B, H-2A, H-2B, and H-3 visa holders to the United States. Many H-4 visa holders are highly skilled and previously had careers of their own or worked to support their families.

Currently, H-4 visa holders must apply for work authorization and wait for it to be processed before they can work, even though they are already in the United States and their spouse is working in the United States. Due to backlogs at United States Citizenship and Immigration Services (USCIS), applications for work authorization can take anywhere from six to eight months, with some applications taking over one year to be approved.

Subtitle B—Improving Employment Based Visas

Sec. 311. Spouses and minor children not included in calculation.

This prevents derivatives from being counted against annual visa totals. Under this provision, only the principal applicant applying for the visa will be counted as part of the total visa numbers for that year. Spouses and minor children will not be included in that total.

Sec. 312. Repeal of FICA exception for certain nonresidents temporarily present in the United States.

This requires students working in the United States as part of the Optional Practical Training (OPT) program to pay FICA (Social Security and Medicare) taxes.

Sec. 313. Individuals with doctoral degrees in STEM fields exempted from H-1B numerical limitations.

This provision exempts individuals who have earned a doctoral degree (PhD) in the field of science, engineering, mathematics, or technology (STEM) from H-1B visa caps. They must have received their degree at a U.S. university. This ensures that individuals who earned PhDs in high-demand STEM fields in the U.S. can use their talents here if they want to, instead of being forced to return home and use their talents elsewhere upon graduation.

Background: H-1B visas are capped at 85,000 annually (65,000 H-1B visa regular cap + 20,000 H-1B visa U.S. advanced degree exemption, known as the master's cap). Currently, individuals with H-1B visas employed at a U.S. institution of higher education, at a nonprofit research organization in the U.S., or a at U.S. governmental research organization are exempt from this cap. This provision adds all U.S. PhD STEM degree holders to this exemption list.

TITLE IV—STUDENT VISAS

Sec. 401. Modernizing Visas for Students.

This changes F student visas to be “dual intent.” Currently, student visas require the applicant to demonstrate nonimmigrant intent. This means international students have to say they intend to leave the U.S. when they finish their courses and must prove they have property in their home country to demonstrate evidence that they plan to return.

Although most students intend to return home anyway, visas are sometimes denied if a student cannot explicitly demonstrate they plan to return to their home country after their studies. This change will remove this roadblock. However, this does not change any process for students that want to stay when they finish their studies. Any students that do wish to remain in the U.S. after their studies must still qualify on their merits for employment-based or other applicable visas.