

Immigration legislation in 2013

The recent Presidential election stressed the importance of the minority community, especially the Latino voters, in influencing the outcome of the election. The Latino community comprises approximately 10 percent of the electorate, and it has been estimated that over 70 percent voted for President Obama. Moreover, this number is expected to significantly increase for the next Presidential election. It has been reported that President Obama won the support of the Latino community with his DREAM Act, whereas Governor Romney's self-deportation rhetoric was not received well by the Latino voters. As a result, the Republican Party has realized that it must broaden its base beyond white voters and has embraced the call, along with the Democrats, for immigration legislation as a priority. CNN's David Gergen said it best on election night, there is reason for optimism about immigration reform in the next Congress, because "Democrats want it and Republicans now need it."

The DREAM Act (acronym for Development, Relief, and Education for Alien Minors) is an American legislative proposal first introduced in the Senate on August 1, 2001. There have been several versions, but basically the DREAM Act would provide conditional permanent residency to certain undocumented residents of good moral character who graduate from U.S. high schools, arrived in the United States as minors, and lived in the country continuously for at least five years prior to the bill's enactment. If they were to complete two years in the military or two years at a four-year institution of higher learning, they would obtain temporary residency for a six-year period. Within the six-year period, they may qualify for permanent residency if they have "acquired a degree from an institution of higher education in the United States or have completed at least 2 years, in good standing, in a program for a bachelor's degree or higher degree in the United States" or have "served in the armed services for at least 2 years and, if discharged, have received an honorable discharge."

Members of Congress have introduced several forms of this bill in both the House of Representatives and the Senate. The Act was considered and debated throughout 2010 and Members in the House passed one version of the bill on December 8, 2010 by a vote of 216-198. On May 11, 2011 Senate Majority Leader Harry Reid reintroduced the DREAM Act in the Senate. Some Republicans who had supported the bill in the past objected that such a bill should not be granted without increasing immigration enforcement. On June 15, 2012, President Obama announced that his administration would stop deporting young undocumented immigrants who match certain criteria previously proposed under the DREAM ACT and on August 15, 2012 the U.S. Citizenship and Immigration Services (USCIS) began accepting applications under the Obama administration's new Deferred Action for Childhood Arrivals program.

Instead of waiting to first resolve the fiscal cliff, both parties are now involved in a dual over new immigration legislation. On September 18, 2012 House Judiciary Committee Chairman Lamar Smith (R-Texas) and nearly 50 Members of Congress introduced the STEM Jobs Act (H.R. 6429). STEM was approved by the House of Representatives on November 30, 2012, by a vote of 245-139.

STEM eliminates the diversity lottery green card program and reallocates up to 55,000 green cards a year to new green card programs for foreign graduates of U.S. universities with advanced STEM degrees. These green cards are first made available to foreign graduates with doctorates and any remaining green cards are then made available for foreign graduates with master's degrees. Many have nicknamed the STEM Act as the "BRAINS Act."

The bill creates a new green card category for aliens who have received STEM doctorates from U.S. universities. Foreign students will be eligible for STEM green cards if they –

- Have received a doctorate from an eligible U.S. university in computer science, engineering, mathematics, or the physical sciences (other than biological sciences);
- Agree to work for at least five years for the petitioning employer or in the U.S. in a STEM field;
- Have taken all their course work (including internet courses) while physically present in the United States; and
- Are petitioned for by an employer who has gone through labor certification to show that there are not sufficient American workers able, willing, qualified and available for the job.

The bill also creates a new green card category for aliens who have received STEM master's degrees from U.S. universities. If any green cards are not used by aliens with doctorates, they will then be made available to foreign graduates with master's degrees. To be eligible, an alien must –

- Have received a two year master's degree from an eligible U.S. university in computer science, engineering, mathematics, or the physical sciences (other than biological sciences);
- Have majored in college in a STEM field;
- Agree to work for at least five years for the petitioning employer or in the U.S. in a STEM field.

As this article is being written, the Democrats have blocked STEM from being introduced in the Senate. The Democrats have announced that they disagree with the elimination of the diversity lottery part of the bill. The Diversity Visa Program, which is better known as the green card lottery, was designed to diversify the immigrant population in the U.S. by awarding permanent residency visas to applicants from countries with low rates of immigration to the United States in the previous five years. Each year, 50,000 people are selected, and 80% of visas are allotted to nationals from Europe and Africa. At this time it is not clear what the next steps, if any, will be for STEM. We do know that President Obama has stated several times that he expects to tackle immigration reform in 2013. In fact, he echoed this in his November 14 White House news conference:

. . . and my expectation is that we get a bill introduced and we begin the process in Congress very soon after my inauguration. And, in fact, some conversations I think are already beginning to take place among senators and congressmen and my staff about what would this look like. And when I say comprehensive immigration reform, it's very similar to the outlines of previous immigration reform. I think it should include a continuation of the strong border security measures that we've taken. Because we have to secure our border. I think it should contain serious penalties for companies that are purposely hiring undocumented workers and -- taking advantage of them.

And I do think that there should be a pathway for legal status for those who are living in this country, are not engaged in criminal activity, are here to -- simply to work. I've -- it's important for them to pay back taxes. It's important for them to learn English. It's important for them to potentially pay a fine, but to give them the avenue whereby they can resolve their legal status here in this country, I think is very important. Obviously making sure that we put into law what -- the first step that we've taken administratively dealing with the DREAM Act kids is very important as well.

Immigration reform has a history of failure. The Immigration Reform and Control Act of 1986 made it illegal to hire or recruit illegal immigrants. In 2006, the U.S. House of Representatives passed the Border Protection, Anti-terrorism, and Illegal Immigration Control Act of 2005, and in 2006 the U.S. Senate passed the Comprehensive Immigration Reform Act of 2006. Neither bill became law because their differences could not be reconciled in conference committee. The Comprehensive Immigration Reform Act of 2007 — its full name was Secure Borders, Economic Opportunity and Immigration Reform Act of 2007 (S. 1348) — was a bill discussed in the 110th United States Congress that would have provided legal status and a path to citizenship for the approximately 12 to 20 million illegal immigrants currently residing in the United States. The bill was portrayed as a compromise between providing a path to citizenship for illegal immigrants and increased border enforcement: it included funding for 300 miles (480 km) of vehicle barriers, 105 camera and radar towers, and 20,000 more Border Patrol agents, while simultaneously restructuring visa criteria around high-skilled workers. The bill was introduced in the United States Senate on May 9, 2007, but was never voted on, though a series of votes on amendments and cloture took place.

Has the 2012 Presidential election created a new atmosphere of cooperation that will lead to the Comprehensive Immigration reform Act of 2013? Only time will tell.