The Road to Citizenship Under Border Security, Economic Opportunity and Immigration Modernization Act (S. 744)

I. Introduction

The United States has commonly been referred to as a “nation of immigrants,” welcoming people of various origins, races, and religions, all hoping to find freedom, new opportunities, and a better way of living. Over the past fifty years, the immigrant population of the United States has increased significantly. However, current immigration system is broken: it is not able to provide sufficient number of immigrant and non-immigrant visas for those who want to come to the United States, and a wait-list—or a backlog—for family-sponsored and employment-sponsored “green card” applicants might be as long as twenty-three years. As a result, by 2011 there were eleven million undocumented immigrants residing in the United States.

The lawmakers made several attempts to address the problem since 1986, but the numbers speak for themselves—millions of immigrants stay undocumented without any chance to obtain legal status.

On January 28, 2013, a bipartisan group of U.S. senators presented a framework for a future bill that was intended to modernize country’s inadequate immigration system. The Senate passed the bill on June 27 by sixty-eight to thirty-two votes; and it proceeded to the House of Representatives. The Border Security, Economic Opportunity, and Immigration Modernization Act of 2013 (“the Act”) is one of the most comprehensive documents in immigration policy in more than twenty-five years. It deals with all aspects of the immigration system: from border security and interior enforcement to employment verification and legal immigration reforms. The most important principle of the Act is to create a “tough but fair path to citizenship” for those who are currently living in the United States without authorization.

Title II, Subtitle A of the Act provides a relief to many undocumented immigrants who already live in the United States and gives a possibility to earn legal status through a new registered provisional immigrant (“RPI”) status, sets eligibility criteria for adjusting the status to a lawful permanent resident (“LPR”), and incorporates versions of the DREAM Act for undocumented young people brought to the United States as children.

This article will concentrate on the analysis of the RPI status: problems undocumented immigrants face today, eligibility requirements for RPI status, and possible barriers on the way to the citizenship. In the end, it will discuss the version of the DREAM Act, integrated in the Act.
II. Living in the “shadows”: Why the Reform is Necessary

“Undocumented immigrants are foreign nationals who (1) entered the United States without inspection or with fraudulent documents; or (2) entered legally as a nonimmigrant but then violated status and then remained in the United States without authorization.”[14] People who entered the United States lawfully, but later lost their status—for example overstayed their visas, or worked without authorization—could still become permanent residents; the most common example includes adjustment of status (“AOS”) through the immediate relative who is a U.S. citizen[15]. Those who entered the United States illegally—for example, secretly crossed the border, or entered without inspection and authorization by an immigration officer—are not entitled to apply for lawful permanent residency in the United States by utilizing AOS process[16]. As a result, many undocumented and unlawful immigrants have limited options for legalizing their status[17]. Those, who do not qualify under current immigration laws, have only two choices: deportation[18] or forever live in the “shadows.”[19]

Life of undocumented immigrant is full of anxiety and fear of detection, arrest, deportation, or simply not being able to provide for the family.[20] Many undocumented families live at or below the poverty level.[21] Moreover, their ability to work is limited—not only because of poor language knowledge or lack of education—but due to legislation that prohibits to hire unauthorized workers.[22] Many of immigrants become victims of domestic violence or sexual abuse, but do not go to the police or seek other forms of protection, because they do not speak English, unaware of their rights, or afraid of being deported.[23] Fear to be detected stops them from getting proper medical care.[24] In general, undocumented immigrants are excluded from any activity or sphere of life where the proof of identification or Social Security number (“SSN”) is required.[25]

Even more tragic is a situation with undocumented youth. They were brought to the United States by their parents at a very young age, lived here much of their lives, and consider it to be their “home country.”[26] However, undocumented youth is “denied identification (library card, state I.D., driver’s license), prevented from taking school trips, or begin the process of searching for universities to attend and scholarships to apply for.”[27] Even if undocumented students are able to attend a college and pay extraordinary tuition without any opportunity for student loans, upon graduation they are unable to apply their education in desired fields due to lack of legal status and/or a valid SSN.[28] These young people generally obtain their immigration status through their parents,[29] and, if their parents are undocumented, most have very limited ways to legalize.[30] This is a circle, when young immigrants have no other choice but to repeat the life of their undocumented parents. As some authors noted, these young people—who were brought to the United States as children and did not intentionally violate any laws—are punished for their parents’ choices.[31]

Additionally, immigrant population—which is estimated at 3.7 percent of the U.S. population, but non-existent in a legal sense—has a significant impact on the economy.[32] There is a general misunderstanding among Americans that undocumented immigrants—or most commonly referred as illegal aliens—are “disease-ridden, drug-smuggling, violent criminal[s] who will head straight to the local welfare office, all while stealing your job.”[33] The negative features attributed to undocumented immigrants overshadow their positive impact.[34] In reality, immigrant population brings extraordinary benefits to the U.S. economy as consumers of goods and services, taxpayers and affordable labor force, while being excluded from receiving the federal welfare benefits.[35] Undocumented immigrants fill up the shortage of labor force in the sectors where American workers do not want to work.[36] Deportation of eleven million people in this situation would be devastating for the U.S. economy.[37]

By 2013, members of Congress, immigration organizations and activists came to understanding that the only solution for millions of unauthorized immigrants is a complex immigration reform, which will allow them “a transition from an underground existence to living in legal status and, ultimately, to naturalized citizens.”[38] President Obama in his speech supported the reform, noting that eleven million of immigrants are living among Americans, have siblings, spouses and children who are American citizens, interwoven in the life of the American people and have a huge economic impact.[39] “We all agree that these men and women should have to earn their way to citizenship. But for comprehensive immigration reform to work, it must be clear from the outset that there is a pathway to citizenship.”[40]

III. The Beginning of the Path: Application and Eligibility for Registered Provisional Immigrant Status

Section 2101 of the Act amends the Immigration and Nationality Act (“INA”) by adding section 245B, which creates a new RPI category.[41] RPI status is the path to the citizenship for eleven million undocumented immigrants presently residing in the United States. Person granted RPI status would be considered lawfully present in the
United States since the date they filed their application. They will be authorized to be legally employed and eligible to obtain SSN. They also will be allowed to travel outside of the country and be admitted on return.

Some authors note that even though, “the drafters were very careful in not using the word amnesty, . . . in essence, the path to citizenship is amnesty because the government will pardon a group that violated immigration law by granting legal status that allows them to remain on US soil, travel and work.” Others prefer the term earned legalization, because immigrants must meet strict criteria such as continuous presence, employment, and knowledge of English, and pay large fines and fees to obtain legal status. “By imposing this more rigorous path to . . . LPR status, earned legalization . . . designed to capture the main benefits of legalization while addressing concerns about unfairly rewarding unauthorized immigrants and undermining enforcement.”

An applicant should meet strict eligibility requirements by the preponderance of evidence. To be eligible for RPI status a person must have been physically present in the United States before December 31, 2011, have maintained continuous presence on the date of application, and have to be continuously present in the United States until granted RPI status, except for brief, casual and innocent or authorized departures. Applicants for RPI status must pay any outstanding federal tax liability that has been assessed by the section 6203 of the Internal Revenue Code, and must pay taxes during the period of RPI status. Besides that, applicants must pay a processing fee, which includes an application fee, the cost of gathering biometric screening data and a $1000 penalty fee paid to Department of Homeland Security (“DHS”). Additional security measures might require an applicant to provide the DHS with biographic information and to pass a background check.

If an applicant has been convicted of a felony, aggravated felony, or three or more misdemeanor offenses for which the applicant was convicted on three different dates, the alien is disqualified. If the crime was committed in a foreign nation and such a crime is illegal in the United States, the alien cannot apply for RPI status. An applicant is ineligible if he is inadmissible under the current immigration law. Therefore, “[C]ongress wants to send a strong message that it does not reward those that came into the country illegally, [however] they [are] giving them the biggest reward of all—to remain in the country by granting a pardon to those that violated immigration laws.”

The most important that people who have been apprehended by immigration authorities prior to the RPI application period, ordered removed, or are in removal proceedings, would be given a second chance: they will be able to apply for RPI status—if they can establish eligibility for the status—and could not be removed. Those who have been removed from the United States or voluntary departed, or reentered unlawfully after December 31, 2011, still will not be eligible to apply. However, by DHS Secretary's discretionary decision, people that have been deported for noncriminal reasons—but who are the immediate relatives of a citizen or “green card” holder, or are a DREAMer—are allowed to apply for RPI status from abroad. This provision will allow the return of the people who were removed from the country, and cause an unprecedented reunification of the families that were set apart by deportation.

A person with RPI status will be able to file an application on behalf of eligible dependent children and spouses who were residing in the United States before December 31, 2011. There is a special provision in the Act for eligible people who were granted deferred action under the Deferred Action for Childhood Arrivals (“DACA”) program, they may obtain RPI status if they passed the clearance for national security and law enforcement purposes.

Even though, on an estimate 500,000 people have entered the country unlawfully after December 31, 2011, and about fifteen percent will be ineligible to apply because they do not have enough money to pay all the fees, or otherwise excluded, still, more than nine million people will be eligible for RPI status.

IV. Barriers on the Road to Citizenship: From Registered Provisional Immigrant to Permanent Resident

Upon approval of the RPI application, an immigrant will have RPI status for six years that may be renewed for another six years. At renewal, an immigrant must demonstrate that she had been regularly employed—except for brief periods of no more than sixty days—and is not likely to become a public charge, or must earn an average income or have resources at 100 percent of the federal poverty level or higher throughout the period of RPI status. The RPI status does not grant a permanent resident status automatically; if the provisional immigrant wants to live in the United States permanently, an AOS will be required.
One of the principles in Bipartisan Framework for Immigration Reform report prescribes “to ensure that no one who has violated American’s immigration laws will receive preferential treatment as they relate to those who have complied with the law.” Consider these eligibility requirements for RPIs who want to adjust their status to LPR. RPIs will be able to apply for LPR status after they have been in RPI status for at least ten years, but, even then, they must go to the “back of the line.” That means, that they will receive LPR status only after all other applications submitted before the enactment of the bill have been processed. They have to maintain regular employment with gaps no more than sixty days, or, in the alternative, to show an average income or resources of 125 percent of the poverty level during the RPI period. Exceptions are made for full-time students, children under twenty-one years old, physical or mental disability, and showings of extreme hardship. Applicants would also have to show that they have maintained RPI status, paid taxes, have to meet English proficiency and education requirements, pass an additional background check, and pay application fees, and an additional $ 1000 penalty. In the best case, RPIs who have been lawfully present in the United States for ten years will be able to apply for U.S. citizenship after being in LPR status for three years. Therefore, undocumented immigrants in RPI status will have to wait at least thirteen years to become citizens.

While the Act brings a lot of positive changes and establishes the road to citizenship for undocumented immigrants, some authors express “grave concerns about affordability and other roadblocks that would limit who can actually get on the road to citizenship”, explaining that some low-income applicants will not be able to remain on the path to the citizenship due to some challenging requirements.

First, the road to citizenship will be at least thirteen years long for most people—ten years of RPI status and three years of LPR status. The Act does not specify whether a person already in RPI status would be eligible to adjust their status sooner by other means—such as apply for the “green card” through family member or employment—and there certain concerns among immigrants of the possibility to be locked in RPI status for more than ten years. The other problem is that AOS to LPR is contingent on the availability of the “green cards”. There is a high probability based on historical data that the backlog might not be possibly reduced by 2021.

Second, fines and penalties include $ 1000 for the RPI application and $ 1000 when applying for LPR status. Application fees have not yet been set, but they might be as high as $ 1000 per person. Besides that, an applicant may not file an application for AOS under this section unless she has satisfied any outstanding tax liability, which poses additional financial restraint. Undocumented immigrants are usually among low-wage workers, and more than a quarter of undocumented families have annual incomes of less than $ 20,000. Therefore, fines and fees over $ 3000 per person will exclude the low-income immigrant families from legalization process, or make them choose which member of the family will apply first. On one hand, fines and fees are justified because they reflect the cost for breaking the law. However, they could make the path to citizenship unaffordable for many of otherwise eligible immigrants, therefore, they “undermine immigration reform’s most fundamental goal: to bring the [eleven] million people aspiring citizens out of the shadow . . . so they can be full-fledged members of American society.”

Third, the Act requires an applicant demonstrate that they are regularly employed—again with a period of unemployment no longer than sixty days—and are not likely to become a public charge, or demonstrate that they earn an average income or have resources of at least 125 percent of the federal poverty level. There is no doubt that most of the immigrants come to the United States to work, and, most likely, will be working hard to afford the high cost of legalization. However, some authors consider this requirement unnecessary, because proof of regular employment is “difficult for many low-wage immigrants in irregular or seasonal employment and creates an unnecessary level of governmental red tape.”

Fourth, to apply for RPI immigrant must achieve an understanding of English and knowledge and understanding of the history and Government of the United States. There are exceptions for people with a physical or mental disability/impairment, and it may be waived for people who are seventy years old or older when they are filing their application for AOS to LPR. However, there is a possibility that many immigrants will be unable to satisfy the English requirement because of “limited availability of [affordable] English-as-a-second-language courses”. The knowledge of English language is very important for further integration of an immigrant in American society. Some authors see the solution for this problem in providing more available and affordable English classes for immigrants.

Finally, the Act sets forth that RPIs will not be eligible for federal public benefits such as Medicaid, food stamps, and benefits under the Affordable Care Act, and will not receive social security credit for previous unauthorized
Immigrants in RPI status will be denied access to any federal means-tested public benefits. According to current eligibility rules regarding federal benefits for noncitizens, immigrants who physically entered the United States on or after August 22, 1996 are banned from federal means-tested public benefits until they have been qualified immigrants for at least five years. Therefore, people granted RPI status would have to wait, at a minimum, thirteen to fifteen years — ten years in RPI status and three or five years in LPR status — to become eligible for these essential anti-poverty programs their taxes help to fund. The Act excludes RPIs, including DREAMers, from benefiting from the parts of the Patient Protection and Affordable Care Act. Therefore, if the health insurance is not affordable for many low-income RPIs, they will be forced to stay uninsured for over ten years. These all will negatively affect immigrants’ families in general, and their U.S.-born children in particular, as they are eligible for these kind of benefits as U.S. citizens.

V. The DREAM way

Section 2103 — Development, Relief, and Education for Alien Minors Act of 2013 — incorporates version of a “DREAM Act” that provides a path to legal status to undocumented immigrants who came to the United States as children. To qualify for the DREAM way to LPR status and citizenship, a person must have been younger than sixteen years of age on the date he or she initially entered the United States, earned a high school diploma or obtained a GED in the United States, has acquired a degree from an institution of higher education or has completed at least two years, in good standing, or in a program for a bachelor’s degree or higher degree in the United States; alternatively, has served in the Uniformed Services for at least four years, and if discharged, received an honorable discharge. According to the studies, estimated 2.1 million DREAMers could be eligible.

The DREAMers are granted an expedited road to citizenship as they eligible to adjust to LPR status only after five years of RPI status, and they are excluded from “back of the line” provision. The DREAMers granted LPR status would be eligible to apply for citizenship without further delay. Besides that, the Act provides that DHS secretary would have the discretion to establish streamlined procedures for DACA eligible applicants.

This is the most progressive version of the DREAM Act so far. First, unlike previous versions, the DREAM Act 2013 contains no age cap, which means that even DREAMers who have been waiting for more than a decade and are now older than thirty years old can still qualify. Second, it provides an expedited path to citizenship. For example, the DREAM Act of 2010 provided conditional nonimmigrant status for a period of ten years; after nine years as a conditional nonimmigrant, an individual may file an application for AOS to “alien lawfully admitted for permanent residence,” and then apply for citizenship after three years. Therefore, under previous versions of the DREAM Act the process of becoming a naturalized citizen of the United States might have been taken at least thirteen years. The new Act provides the “fast track” of five years for immigrants eligible under section 2103.

Finally, the Act repeals section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Section 505 of IIRIRA limited states’ options to provide in-state tuition without regard to immigration status. “Under [IIRIRA], states provid[ing] a higher education benefit based on residency to undocumented immigrants must provide the same benefit to U.S. citizens in the same circumstances. . . . [Only] twelve states have enacted laws permitting . . . undocumented immigrants . . . to pay the in-state rate at public colleges and universities.” The Act restores the option to the sates to determine residency for purposes of higher education, therefore, states would not be longer required to provide the same in-state reduced rate to residents of other states. The Act also excluded a provision the alien has to be a person of good moral character since the date the alien initially entered the United States.

Young undocumented immigrants have been waiting for implementation of the DREAM Act for over a decade. If it becomes a law, it will finally allow the undocumented youth not only to call America “home”, but will provide access to legal residency and federal financial aid — removing barriers to higher education and better employment, and increasing their potential to fully contribute to American society and economy.

VI. Conclusion

Despite some failing provisions, overall, the Act brings many positive changes in a current immigration system. The most important, it provides an achievable and practical path to citizenship for eleven million undocumented immigrants, currently residing in the country. Ability to obtain a legal status would truly mean a life for a lot of immigrants — no more fear to be detected and deported, no more exploitation at work for the low wage, no more fear to be separated with children and family, no more exclusion from daily activities, and much more.
The Senate passed a bill back in June. Its passage was an important step for the immigrants and immigrant activists on the way to immigration reform. However, over three months have passed since bill went to the House of Representatives, and nothing has happened. This bill, like any bill, has the possibility of never becoming a law, however, every day that passes without it, millions of people continue living in the “shadows” without any hope to obtain legal status under the current immigration system.


[12]. Id. § 2102.

[13]. Id. § 2103.


Id. § 1255(i), (l), (m); see Marouf, supra note 15, at 134.


Laura Corrunker, “Coming Out of the Shadows”: DREAM Act Activism in the Context of Global Anti-Deportation Activism, 19 Ind. J. Global Legal Stud. 143, 152 (2012); see also Timmerman, supra note 14, at 68.


See Marouf, supra note 15, at 134.

See Barron, supra note 19, at 623.

See Shatniy, supra note 1, at 883.

Legomsky, supra note 20, at 75.

Marisa Silenzi Cianciarulo, Can’t Live with ‘Em, Can’t Deport ‘Em: Why Recent Immigration Reform Efforts Have Failed, 13 NEXUS 13, 26 (2008).

Legomsky, supra note 20, at 120. “Contrary to impression that immigrants are avoiding tax liability, they actually pay the same sales taxes, gasoline taxes, property taxes (indirectly through their landlords if they rent), and federal social security taxes, and are ineligible for the benefits certain deductions available to citizens and lawful permanent residents.” Id. See also Shatniy, supra note 1, at 884.
[36]. See Cianciarulo, supra note 34, at 21.

[37]. See Shatniy, supra note 1, at 887.


[40]. Id.


[42]. S. 744 § 245B(d)(1)(C).

[43]. Id. (d)(1)(A), (5)(A).

[44]. Id. (d)(1)(B).


[47]. Id.

[48]. S. 744 § 245B(b)(1).

[49]. Id. (b)(1)–(2).

[50]. Id. (c)(1).

[51]. Id. (c)(10)(A), (C).

[52]. Id. (c)(8).


[54]. Id. (a)(3)(A).

[55]. Id. (b)(3).

[56]. Ramirez, supra note 45.

[57]. S. 744 § 254B(c)(5), (7)(C).

[58]. Id. (c)(6).

[59]. The term “DREAMers” comes from a Development, Relief, and Education for Alien Minors (DREAM) Act that was first introduced to Congress in 2001 to provide a path to citizenship for qualified young people who were brought to the U.S. as children, which, over the years and after many proposed versions, has continuously failed to pass. Steve Manas, Obama Administration Announces Change in Policy Toward Undocumented Youth, Rutgers (June 20, 2012), available at http://news.rutgers.edu/medrel/q-and-a-hot-topic/hot-topic-2012/obama-administration-20120618.

[60]. S. 744 § 245B(c)(6)(b).

[61]. See Ctr. for Am. Progress Immigration Team, The Top 5 Things the Senate Immigration Reform Bill Accomplishes, Center


[63]. Id. (c)(13).

[64]. See Ctr. for Am. Progress Immigration Team, supra note 61.

[65]. S. 744 § 245B(c)(9)(a).

[66]. Id. (c)(9).

[67]. Id. (d)(D)(ii).

[68]. Immigration Reform report, supra note 6, at 2.

[69]. S. 744 § 245C(c)(2).

[70]. Id. (c)(2).

[71]. Id. (b)(3).

[72]. Id.

[73]. Id.

[74]. S. 744 § 245C(b)(2)-(4).

[75]. Id. (f).

[76]. Summary & Analysis, supra note 8, at 3.

[77]. Id. at 4.


[79]. S. 744 § 245C(c)(2) (“back of the line provision”).

[80]. See Cipolla, supra note 3.

[81]. S. 744 § 245C(c)(5).

[82]. Form G-1055, Fee Schedule (Dep’ of Homeland Sec., Nov. 23, 2010), available at http://www.uscis.gov/files/form/g-1055.pdf. For example, fee for Application to Register Permanent Resident or to Adjust Status (I-485) is $ 985 plus $ 85 biometric fee; fee for Application for Naturalization (N-400) is $ 595 plus $ 85 biometric fee. Id.


[84]. See Rosenblum et al., supra note 46, at 17.

[85]. Summary & Analysis, supra note 8, at 5; see Rosenblum, supra note 46, at 17-18.

[86]. See Rosenblum et al., supra note 46, at 17.

[87]. Immigration Reform 2013: The Financial Barrier to Citizenship, Nat’l Immigr. L. Center (June 6, 2013), http://www.nilc.org/financialbarriercitizenshiprev.html. Noting that 8.5 million immigrants in the U.S. are eligible for naturalization, but due to the cost never made any steps towards applying. Id.

[88]. S. 744 § 245C(3)(A).
See Rosenblum et al., supra note 46, at 18.

Summary & Analysis, supra note 8, at 4.

S. 744 § 245C(b)(4).

Id.

See Summary & Analysis, supra note 8, at 4.

Id.

S. 744 § 245C(d)(4).

Id.

S. 744 § 245C(b)(4).

Id. § 245D(b)(1)(A)(ii)-(iv).

Id.

S. 744 § 2103.

Id.


S. 744 § 245B(b)(4).

See FAQ, supra note 98.

S. 744 § 2103.

Id. § 245D(b)(1)(A)(i).

Ctr. for Am. Progress Immigration Team, supra note 61.


S. 744 § 245D(b)(1)(A)(i); DREAM Act: Summary, supra note 104.

S. 744 §245D(b)(1)(C).


For example, in DREAM Act of 2011, “under the Senate bill qualifying students must be under age 35, and under the House bill they must be under age 32.” DREAM Act: Summary, supra note 104.

S. 3992 § 6.

Id. 6(k).

S. 744 § 245D(d).

See Timmerman, supra note 14, at 69-70.


See Reiff, supra note 7.