

White House Issues: Its Version of CIR

Contributed by aboali
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The audio for this podcast can be downloaded at <http://www.immigrationfridays.com/podcasts/04062007.mp3>

00:02 Announcer: Welcome to Immigration Fridays, your source of up-to-date immigration information brought to you every Friday, from Miami, Florida by the Immigration Law Offices of David J. Hart, P.A. 00:23 Announcer: Today is April 6, 2007 and this week's topic, White House Issues: Its Version of CIR. Here is David Hart. 00:32 David Hart: Welcome back everyone to Immigration Fridays. Today is April 6, 2007. My name is David Hart, immigration attorney here in Miami, Florida. We are actually doing our podcast a few days early. And you will see it posted or by now you would have seen it posted on our website, www.immigrateusa.com and the reason that we are doing that is I'm going to be away, Andrea is going to be away as well, and we had some news at the White House and that is really the topic of our podcast today, which is we are going to go through what the White House has proposed in terms of its version of comprehensive immigration reform. Andrea is not here with me at this point because she is busy with our H-1 filings as I had mentioned in our previous podcast. In any event, so as to not lose a week, we wanted to produce this podcast for you. We are doing it a few days early and as usual if you have any questions or comments, I welcome your emails to dhart@immigrateusa.com. 01:44 David Hart: Here is where we are at basically in terms of immigration reform as we had mentioned in previous podcasts; the STRIVE Act of 2007 was introduced in the Senate by Representatives Flake and Gutierrez, and we still don't have any news on who is supporting that or where it is at as of this point and we probably will not have any news until probably the middle of April when the House reconvenes. The House will be out for Easter. I guess it would be the Easter break for two weeks and the Senate apparently for one week. The White House has issued a document; it is a PowerPoint and we posted it on our website, which they say has been a document that they have been working on for several weeks with they say republicans in Congress. They are not saying who. We have an idea who some of them are, but they say that there are members of the White House Team working on this on a daily basis. There are several interesting points; the document is pretty not specific in terms of the procedure. So it is more of an outline than anything else but it does give some interesting ideas and the reason that we think it is worthy of discussion is if you look at the recent history starting from January when Congress reconvened this year, January 2007, there was the expectation that immigration reform legislation would be introduced sooner rather than later. And that obviously didn't happen. It comes to past that obviously with the Senate and the House in the control of the democrats, we find out that Senator Kennedy was, at some point in the beginning, trying to craft an immigration reform bill on his own or with a very small group of colleagues, and that was not something that the White House and certain republicans were very happy with. What that did is it produced then or prompted certain republicans together with the White House to get to work on their own version knowing full well that not much is going to happen unless there is a bipartisan willingness to pass something. So what maybe occurring is this is their version, Senator Kennedy has a version, which we can maybe assume is similar to what was passed last year - McCain-Kennedy, that is pretty much the basis of the bill that passed the Senate last April or May. 04:49 David Hart: But this is really quite different. So we will go through point by point in a general way just so you get an idea of what may result. I don't think this is going to be the version because it is very different and that is really what is so significant and that is why we are talking about it. But they are basically creating 2 new visas: for temporary workers which is a Y visa; and then the Z visa which is for those people who are already in the US without lawful status, and they are estimating, most people estimate that there are between 10 and 12 million. In almost all cases, it is going to require eventually proof of English proficiency, civics training, and then Oath of Allegiance, which is similar to what people have to pass or provide when they try to become a US citizen. And then, there is what they call certain hard triggers which have to be met before the temporary worker program and the Z visa or implement it and those have to do with border enforcement and interior enforcement related to certain card that is evidence that someone's documents are legal, in other words, usable to be employed. It doesn't exactly say in a specific sense what those triggers are but it says hard triggers, which for me is different from the let us call them the triggers that were indicated in the STRIVE Act which basically used the words when the Secretary of Homeland Security certifies that certain processes of being implemented and so the word "implemented" is pretty general, and I think this is maybe either a reaction to that or something that they have negotiated. 06:44 David Hart: This goes back to last year; the debate was that hard line, certain harder line, let us say republicans were more in favor of immigration enforcement first and then immigration benefits or reform for the 12 million and what they call then a guest worker program, which is now the temporary worker program. Here what they are doing and what the STRIVE Act did was include them both but indicate that certain enforcement aspects had to be taken care of first and then the Secretary of Homeland Security would certify and then with that certification, they would put a timeframe to commence the temporary worker program and in this case the Z visa. 07:46 David Hart: So this document basically talks about the Y visa, the Z visa, and then it talks about certain family backlogs and then, well not most importantly but it implements and I think this is the first time in the history of US immigration, a point system for permanent residency similar to the Canadian system or the Australian system or I think the UK system, which is very interesting. But the temporary worker visa which is the Y visa would have a first year cap and then after that, the cap could be modified by the Secretary of Homeland Security, who in consultation with the secretaries of labor and commerce, would have to certify a demonstrable need for higher or lower numbers. There would have to be an offer of employment in a US company that is making the offer. It would have to show that US workers are not available. Again, we are not sure if that would be an attestation or an actual test of labor market similar to what we call today the labor certification. So we just don't know that. And then there would be a publicly accessible computer database where

all offered positions would be listed so that American workers or workers who are legally working in the US could compete for those jobs and see that they are available. 09:12 David Hart: And there are two sorts of temporary workers: seasonal and the non-seasonal. A seasonal worker would be able to work a maximum of 9 months and then would have to leave let us say go home for 3 months and that could be renewed indefinitely. And the main program they call it in other words the non-seasonal would permit the worker to remain in the US for 2 years and then would have to be abroad for 6 months and that could be renewed twice for a total of 6 years. And that worker could not bring his or her family but could travel freely once that visa was issued to them. And obviously these temporary workers are workers who are abroad who would be coming in to do any kind of job whether it is landscaping, construction, obviously agriculture is separate and it seems to me it would fall in the seasonal worker category. It does indicate the temporary workers could apply for residency through whatever normal channels but would have to wait the normal processing times even if that would take longer than the amount of time that a temporary worker has which I have already said would be 6 years approximately. 10:25 David Hart: For the currently undocumented, that is a 10 to 12 million, that is the Z visa; there would be a penalty of \$2000, which would be imposed for every 3-year period and that could be renewed indefinitely. So someone who is here would have to register and would be issued employment authorization and they have to go through certain, obviously everyone has to go through security clearances and name background checks. They would also have to pay the processing fee of \$1500 to process their Z visa. I didn't mention it but that \$1500 also applies to the Y visa although the \$2000 penalty does not because the penalty is a recognition of either entering illegally, in other words, without authorization or entering legally and then falling out of status by staying beyond the period of time authorized. The Z visa holders would be eligible for social services and I'm assuming they are referring to children for primary and secondary public education. The Z visa holder after the first period of 3 years, in other words at the first renewal, would have to pass an English test, civics, the same test that is required for citizenship, and a Z visa holder could not offer any kind of derivative status to any family member who is abroad. 12:00 David Hart: In terms of the new system for residency, they are proposing to redirect 50,000 annual visas to what they called merit-based and national need categories. They don't really describe what that is and they also proposed to eliminate the preference categories for siblings; brothers and sisters and adult children. Today, a US citizen and a resident can petition for an adult child, in other words, over 21, and as a citizen, you can even apply for your married adult child. There is significant backlogs and those would be eliminated and they are taking all of those visas that are available and would put them to another category. They would also propose to eliminate the Diversity Visa Program, which is I believe 45,000 or 50,000 visas a year. They would also require the current applicants on any wait list to pay a \$500 filing fee and basically renew their application, and the idea behind that the way I understand it is they would basically get rid of or call the list for people who are not interested anymore, who may have passed away, who don't qualify anymore because they got married if they were in the single category, things of that nature. And they believe that they could clean up those list and dramatically reduce the backlogs or at least partially reduce the backlogs and actually have an idea of how many people really are on the list. 13:38 David Hart: The new system would prioritize according to national needs and individual merits by emphasizing education and they also want to make it easier for foreign students who are in science and technology, engineering, and medical degrees to remain and work in the US, which right now as most of you know if you are an F1 student, you can get a year of optional practical training and then obviously if you have fallen to the H1 quota problem, you are basically out of luck unless you can organize yourself relatively quickly. 14:15 David Hart: After an initial period, they would want to implement a point-based system for up to 700,000 applicants per year, which is a significant increase. You may recall from podcast before that in the employment-based classification, we have 140,000 immigrant visas that are issued a year and that includes derivatives, in other words, a family of four: mom and dad and two kids, is going to take up four spaces on that 140,000. So that is the reason it goes so fast. And this new point-based system is based on educated and skilled workers critical to national competitiveness and to unskilled workers with high employer valuations and other equities and roots in the US. The merit system would be tuned at various points to keep the level and mix of permanent residency approval focused on the national interest. So I think what that means is there maybe a way for certain industries; for example, if the construction industry is in the boom period and they can prove that, then they would be able to argue that they need more of the unskilled workers who are coming in for construction purposes. 15:33 David Hart: Finally, the current undocumented Z visa holders who wish to apply for residency would have to do whatever program exist. Let us say if this program is implemented, they would be able to do that just like anyone else but there is some specific restrictions and this is something that let us say in recognition of their unlawful status or what they had previously which was an unlawful status and that is how they got to get a Z visa. They would have to pay a penalty of \$10,000 and that would be \$2000 when applying and \$8000 when approved. They would not be able to adjust status. Those of you may know that adjustment of status is the process of converting to a permanent resident while in the US, in other words without having to leave the US to apply for residency. If they are not eligible, you apply for consular processing at the US consulate in the country of origin and usually you would already have a valid Z visa, which would then pretty much guarantee it that if you have a problem at that consular interview, you would be able to return. That remains to be seen. The issue here is the I think the \$10,000. We don't know if it is per person or per family. It says only \$2000 when applying and \$8000 when approved. It is a lot of money. If you factor in other fees and other costs including the cost of the Z visa calculating here that the Z visa with a \$2000 penalty is \$3500, again we don't know if that is per person. The application will be point based not based on an offer of employment and the point system criteria would be for education skills, English proficiency, employer recommendations with additional significant wait to how many years of US work, property ownership, health insurance enrolment, children success in school, civic roots, etc. 17:38 David Hart: Finally for now in any event, a Y visa holder that is the temporary worker would be able to apply for residency but nothing that is automatic and they would have to apply I believe it sounds like just like the Z visa holders although perhaps without paying the penalty. They would be

able to apply through the normal channels without jumping forward applying through the normal channels like any other person, which is significant because there had been some discussions amongst many republicans that the guest worker program was intended to be temporary for 6 years that is 3 years plus 3 years, and then the person would have to go home. 18:26 David Hart: In any event, we have given you something to think about and obviously we will see what is going to happen. I don't think this is the final version by any stretch of the imagination but this is quite a departure from the STRIVE Act and from Kennedy-McCain but it indicates that something is going on that is why at least in my opinion it is so significant. It has some what I think are interesting ideas that we could manage and I think it is a recognition that usually in Washington, big changes are hard to implement but everyone recognizes that our immigration system is broken basically and so I think there is probably there is an acknowledgment that something has to be done and I think this is not a negative offering from the White House at all. The fact that what is troubling perhaps is that the fact that it is so different may mean that the gulf between the republicans and democrats is so huge and the fact that time is going on. We all know that if we don't have immigration, we all believe that if we don't have immigration reform by let us say the end of the summer that we are not going to have anything until after the presidential elections and then we will see what happens in terms of the elections in Congress as well as the presidential elections and then it is anyone's guess. 20:00 David Hart: Again, we look forward to our next podcast for next Friday and we wish you all the best. Thank you. 20:15 Announcer: I would like to provide you with our contact information so that you can send in your questions, stories and situations. We will try to answer your questions and maybe even interview you on a future program. You can leave a message at 305-577-9977. From overseas, the code for the U.S. is 01 or toll free in the US and Canada at 1-800-344-4278. Leave a message for Immigration Fridays or email us at dhart@immigrateusa.com. You can also find us at www.immigrateusa.com.