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Immigration Legislation and Issues in the 107th Congress

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LEGISLATION

Immigration Legislation and Issues in the 107th Congress

SUMMARY

Top immigration issues before the 107th Congress include the reorganization of the Immigration and Naturalization Service (INS), currently part of the Department of Justice (DOJ), and the eligibility of noncitizens for public assistance. Also pending are various measures to enable unauthorized aliens to become legal permanent residents (LPRs) and to reform temporary guest worker programs.

The House has passed an INS reorganization bill (H.R. 3231) that would abolish INS and create two separate bureaus within DOJ to carry out INS's current immigration services and enforcement functions. The Senate Governmental Affairs Committee has marked up a bill (S. 2452) that would transfer INS's border patrol authorities and functions, along with other agencies' border functions, to a new agency. President Bush has proposed transferring INS to a new cabinet-level Department of Homeland Security.

Congress is addressing noncitizen eligibility for public assistance in the context of bills to reauthorize federal public benefit programs. The "farm bill" (P.L. 107-171) expands eligibility for food stamps for certain classes of LPRs. House-passed legislation to reauthorize Temporary Assistance for Needy Families (H.R. 4737), however, would not change the eligibility rules for noncitizens. The reauthorization of the Medicaid program is the subject of separate legislation.

The 107th Congress also has considered legislation (H.R. 1885) to enable certain unauthorized aliens in the United States to adjust to LPR status. This legislation would extend a provision of the Immigration and Nationality Act — §245(i) — that currently covers illegal aliens whose sponsors filed petitions or applications on their behalf by April 30, 2001. H.R. 1885 has been passed in different forms by the House and Senate. Other pending bills would establish mechanisms to allow particular groups of unauthorized aliens — namely, agricultural workers and students — to become LPRs.

Temporary guest worker programs are also the subject of pending bills. Among these bills are measures that would make significant changes to the H-2A program for foreign agricultural workers and the H-1C program for foreign nurses.

Congress has enacted various pieces of immigration-related legislation to date. In addition to the farm bill mentioned above, the most significant of these measures address immigration-related counterterrorism and security issues. Both the USA PATRIOT Act (P.L. 107-56) and the Enhanced Border Security and Visa Entry Reform Act (P.L. 107-173) contain provisions on border security, admissions policy, and foreign students.



MOST RECENT DEVELOPMENTS

On June 5, the Justice Department proposed a “National Security Entry-Exit Registration System,” which would require the fingerprinting, photographing, registration, and tracking of nonimmigrants from designated countries. The department plans to publish proposed regulations soon. On June 6, President Bush announced a plan to transfer the Immigration and Naturalization Service to a new cabinet-level Department of Homeland Security, along with other agencies and units that perform homeland security functions. The President called on Congress to establish the new department by the end of the current session.

BACKGROUND AND ANALYSIS

Introduction

The basic U.S. law regulating immigration, the Immigration and Nationality Act (INA), was enacted in 1952 and has been amended since then. The last major overhaul of the INA occurred in 1996 with the passage of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA; Division C of P.L. 104-208). The Immigration and Naturalization Service (INS) of the Department of Justice (DOJ) administers and enforces the INA. (For a basic introduction to immigration, see CRS Report RS20916, *Immigration and Naturalization Fundamentals*.)

In the aftermath of the September 11, 2001 terrorist attacks, congressional interest in immigration was focused primarily on security- and counterterrorism-related issues, such as border security, admissions policy, and the tracking of foreign nationals in the United States. Now that the 107th Congress has passed major legislation in these areas, other immigration issues that were on the agenda prior to September 11 are receiving considerable congressional attention. Foremost among them are the reorganization of INS and noncitizen eligibility for federal benefits, which are discussed in the initial sections of this report. These discussions are followed by coverage of various proposed mechanisms for unauthorized aliens to obtain legal permanent resident (LPR) status and other immigration issues of significant congressional interest. (The “Legislation” section at the end of the report lists enacted legislation and selected bills receiving action.)

INS Reorganization

INS is the primary agency charged with enforcing U.S. immigration law. Under its current organizational structure, INS has struggled with carrying out its many tasks. The underlying theme of most of the criticism hinges on what many believe are overlapping and unclear chains of command with respect to INS’s two core functions: facilitating legal immigration (service) and stemming illegal immigration (enforcement). There appears to be a consensus among the Bush Administration, Congress, and commentators that the immigration system, primarily INS, is in need of restructuring.

Several pieces of legislation before the 107th Congress would abolish INS and do one of the following: (1) create separate bureaus within DOJ that would carry out INS's current immigration service and enforcement functions and would report to a new Associate Attorney General, and a separate Office of Immigration Statistics within DOJ's Bureau of Justice Statistics (**H.R. 3231** and **H.R. 1562**); (2) create a new integrated immigration agency with service and enforcement bureaus within DOJ, as well as a separate Office of the Ombudsman and Office of Children's Services within DOJ and an Office of Immigration Statistics within the Bureau of Justice Statistics (**S. 2444**); or (3) disperse INS's service functions among a number of different agencies and create a new enforcement agency within DOJ (**H.R. 4108**).

On April 25, 2002, the House passed, as amended, the "Barbara Jordan Immigration Reform and Accountability Act of 2002" (H.R. 3231). The act would abolish INS and create an Office of the Associate Attorney General for Immigration Affairs within DOJ. Under the newly created office, two new bureaus would be established, the Bureau of Citizenship and Immigration Services and the Bureau of Immigration Enforcement. Several new offices and positions would be created within the Office of the Associate Attorney General and within each bureau. No actions other than committee referrals have occurred on any of the other bills.

Legislation has also been introduced (**H.R. 1158**, **H.R. 2020**, **H.R. 3600**, **H.R. 4660**, **S. 1534**, and **S. 2452**) that would transfer the INS border patrol authorities and functions, along with other agencies' border functions, to a newly created agency. H.R. 1158 was the subject of a joint hearing by subcommittees of the House Government Reform Committee and the House Transportation and Infrastructure Committee in April 2001. S. 2452 was marked up by the Senate Governmental Affairs Committee on May 22, 2002.

On June 6, 2002, President Bush announced a plan to create a new cabinet-level Department of Homeland Security. INS would be transferred to the new department, along with other agencies and units that perform homeland security functions. Under the proposal, INS would be placed under the department's Border and Transportation Security Division. The President called on Congress to pass legislation establishing the new department by the end of the current session. (See CRS Report RL31388, *Immigration and Naturalization Service: Restructuring Proposals in the 107th Congress*.)

Noncitizen Eligibility for Public Benefits

Prior to 1996, LPRs were eligible for federal public assistance under terms comparable to citizens, and states were not permitted to restrict access to federal programs on the basis of immigration status. The 1996 welfare reform law (P.L. 104-193) instituted a 5-year bar for most newly entering LPRs and generally allowed the states to bar noncitizens from Medicaid and Temporary Assistance for Needy Families (TANF), with exceptions for LPRs with 10 years of work history and for certain humanitarian cases, such as refugees and asylees. As the result of perceived abuses and budgetary concerns, it also barred most legal aliens (again excepting LPRs with 10 years of work history and certain humanitarian cases) from Supplemental Security Income (SSI) and food stamps.

As the 107th Congress considers legislation to reauthorize federal public benefit programs, the crux of the noncitizen eligibility issue is what classes of LPRs should be eligible for assistance and what types of assistance should be available to them. Several significant legislative proposals expanding noncitizen eligibility for TANF, SSI, and Medicaid/State Children's Health Insurance Program (SCHIP) are before Congress. This subject also has been a key issue in the comprehensive legislation reauthorizing Agriculture Department programs (**H.R. 2646**, known as the "farm bill"), because the bill includes changes to the Food Stamp program. (See CRS Electronic Briefing Book, *Welfare Reform*, page on "Noncitizens," available at [<http://www.congress.gov/brbk/html/ebwlf60.html>]; and CRS Report RL31114, *Noncitizen Eligibility for Major Federal Public Assistance Programs: Policies and Legislation*.)

Food Stamps

On April 26, 2002, House-Senate farm bill conferees announced an agreement on Food Stamp amendments. On May 1, the House-Senate conference report on H.R. 2646 was filed. The House and Senate subsequently agreed to the conference report, and President Bush signed H.R. 2646, the "Farm Security and Rural Investment Act," into law (**P.L. 107-171**) on May 13, 2002. P.L. 107-171 contains substantial changes to food stamp eligibility rules for noncitizens, expanding food stamp eligibility to include: all LPR children, regardless of date of entry (it also ends requirements to deem sponsors' income and resources to these children); LPRs receiving government disability payments, as long as they pass any noncitizen eligibility test established by the disability program (e.g., SSI recipients would have to meet SSI noncitizen requirements in order to get food stamps); and all individuals who have resided in the United States for 5 or more years as "qualified aliens" — i.e., LPRs, refugees/asylees, and other non-temporary legal residents (such as Cuban/Haitian entrants).

Temporary Assistance for Needy Families

Although the Republican bills reauthorizing TANF — notably **H.R. 4737** (a modified version of the Bush Administration proposal) — do not propose changes in the noncitizen eligibility rules for the program, several bills sponsored by Democrats would expand coverage for certain noncitizens. Title VI of the "Next Step in Reforming Welfare Act" (**H.R. 3625**), an omnibus reauthorization measure, would eliminate the 5-year federal eligibility bar applied to LPRs applying for TANF and ease requirements that sponsors' financial resources be deemed to noncitizens when their eligibility is determined. This same measure also would end current bars against SSI eligibility for LPRs (and similarly ease sponsor deeming requirements for them). **H.R. 3113**, another comprehensive TANF reauthorization bill, would remove the deeming requirements and bars for TANF.

On May 14, 2002, the House Ways and Means Committee reported **H.R. 4090**, rejecting proposals to expand noncitizen eligibility for TANF and change sponsor deeming/repayment requirements. Provisions of the reported version of H.R. 4090 were subsequently incorporated into a larger bill, H.R. 4737, which was passed by the House on May 16.

Medicaid/SCHIP

Several bills have been introduced (**H.R. 1143, H.R. 1528, S. 582, S. 940/H.R. 1990, and S. 2052**) that address Medicaid/SCHIP. These bills generally would give states the option of extending Medicaid and SCHIP coverage to lower-income LPRs (to the extent that they are not already covered) and LPR pregnant and postpartum women and their children.

Higher Education Benefits

Section 505 of IIRIRA made unauthorized aliens ineligible for postsecondary education benefits based on state residence unless equal benefits were made available to all U.S. citizens regardless of state of residence. Bills before the 107th Congress (**H.R. 1563, H.R. 1582, H.R. 1918, S. 1265, and S. 1291**) would repeal IIRIRA §505 and, as discussed below, would provide for the cancellation of removal and adjustment of status of certain alien students. Some of the bills also would make alien students who apply for cancellation of removal under their terms eligible for federal postsecondary education benefits, such as student financial aid. (See CRS Report RL31365, *Unauthorized Alien Students: Issues and Legislation*.)

Legal Permanent Residence for Unauthorized Aliens

According to recent estimates, the unauthorized (illegally present) alien population in the United States in 2000 totaled about 8.5 million. About half of these illegal residents were believed to be Mexican nationals. Media reports last summer indicated that the Bush Administration, which had begun migration talks with Mexico in early 2001, was considering a legalization program for some unauthorized Mexicans in the United States who could meet unspecified work and other requirements. Programs of this type, which require prospective legalization beneficiaries to “earn” legal status through work and other contributions, have been termed “earned adjustment” programs. Adjustment refers to the process under immigration law by which an individual present in the United States is granted LPR status. The Administration has not issued a legalization proposal. If it opts to do so in the future, it may link such an adjustment program to a temporary guest worker program. Some observers believe that the adjustment provisions in pending foreign agricultural worker bills (discussed in the next section) offer the Administration a prototype for a broader adjustment program. House and Senate Democrats expressed their support for an earned adjustment program in an August 2001 letter to President Bush and Mexican President Fox outlining their immigration priorities. They would make the program available to aliens from all countries who are “long-time, hard-working residents of good moral character.”

Foreign Agricultural Worker Adjustment

Some pending bills to reform the H-2A temporary agricultural worker program (see below) would enable certain unauthorized agricultural workers in the United States to become LPRs through a two-stage process. Under these bills (**S. 1161 and S. 1313/H.R. 2736**), aliens who had worked in seasonal agriculture for a threshold number of days during a specified time period would be eligible for temporary resident status. After meeting

additional work requirements in subsequent years, they could apply to adjust to LPR status outside the existing numerical limits. Although the general adjustment framework in the three bills is the same, S. 1161 contains more stringent work requirements for temporary and permanent status than S. 1313/H.R. 2736. Also, S. 1313 and H.R. 2736 provide for the adjustment to LPR status of the spouses and minor children of the temporary residents. (See CRS Report RL30852, *Immigration of Agricultural Guest Workers: Policy, Trends, and Legislative Issues*.)

Adjustment of Alien Students

Multiple bills before Congress (H.R. 1563, H.R. 1582, H.R. 1918, S. 1265, and S. 1291) would enable certain unauthorized alien students in the United States to become legal permanent residents. The eligibility requirements in the bills differ, but in most cases would require the alien to meet specified age requirements, to have lived in the United States for at least 5 years, and to be in school. (Provisions of the bills related to eligibility for higher education benefits are discussed separately above.) (See CRS Report RL31365, *Unauthorized Alien Students: Issues and Legislation*.)

Section 245(i)

In 1994, Congress amended §245 of the INA with a new, temporary Subsection (i) to allow illegal aliens who were eligible for an immigrant visa based on close family ties or work skills to adjust to LPR status in the United States, provided they paid an additional fee. Previously, they were required to return to their country of origin to obtain a visa. Section §245(i) has been extended several times since enactment, most recently in December 2000. The current provision applies only to unauthorized aliens whose sponsoring family members or employers filed visa petitions or labor certification applications on their behalf by April 30, 2001.

Multiple bills have been introduced in the 107th Congress to extend the filing deadline. Among them is **H.R. 1885**, which passed the Senate in amended form in September 2001. On March 12, 2002, the House passed **H.Res. 365**, in which it concurred in the Senate amendment to H.R. 1885 with additional amendments. In H.Res. 365, the House amended the Senate-passed §245(i) extension language; it also added to H.R. 1885 border security legislation that it had previously passed. The §245(i) provisions passed by the Senate and by the House in H.Res. 365 are similar. The Senate version would extend the filing deadline until the earlier of April 30, 2002, or the date that is 120 days after the issuance of final regulations. The House version would change “April 30, 2002” to “November 30, 2002.” In addition, both versions would require beneficiaries of petitions filed after April 30, 2001, to demonstrate that the underlying family relationship existed before August 15, 2001, or that the labor certification application was filed before August 15, 2001. Another §245(i) extension bill (**S. 2493**), introduced on May 9, 2002, would extend the filing deadline until April 30, 2003. It would not establish any earlier deadlines for the existence of the underlying family relationship or for the filing of the labor certification application. S. 2493 has been referred to the Senate Judiciary Committee. (See CRS Report RL31373, *Immigration: Adjustment to Permanent Resident Status Under Section 245(i)*.)

Temporary Guest Worker Programs

The major nonimmigrant category for temporary alien workers in U.S. immigration law is the “H” visa, which includes several programs. Unskilled workers may be admitted into the country through the H-2A program for agricultural workers or the H-2B program for nonagricultural workers. Skilled workers may be admitted through the H-1B program for specialty workers or the H-1C program for nurses.

Possible U.S.-Mexico Guest Worker Program

The United States and Mexico reportedly have been exploring a new temporary guest worker program. These discussions lost momentum after September 11, but have continued. No details about the type of program under consideration have yet been made public. Senator Phil Gramm has outlined a preliminary proposal for a U.S.-Mexico guest worker program. The program would be open to workers in agriculture, service industries, and other sectors of the economy. Unauthorized aliens in the United States would be able to participate in the program, but participation would not lead to LPR status. (The Gramm proposal is available at [<http://www.senate.gov/~gramm/press/guestprogram.html>].)

H-2A Agricultural Workers

The H-2A program provides for the temporary admission of foreign agricultural workers into the United States to perform temporary or seasonal work. The only legal means of importing temporary agricultural labor, the program has long been criticized by both agricultural employers and farm labor advocates. The employers argue that the program is insufficiently flexible and entails burdensome regulations. Farm labor advocates maintain that the program does not provide adequate protections for U.S. workers or H-2A workers.

Pending bills propose significant changes to the H-2A labor certification process and other aspects of the existing program. Currently, an employer wanting to import H-2A workers must first apply to the Labor Department for certification that U.S. workers are not available and that hiring foreign workers will not adversely affect the wages and working conditions of similarly employed U.S. workers. S. 1161 and S. 1313/H.R. 2736 would replace this labor certification process with a labor attestation process, which would be greatly streamlined for jobs covered by collective bargaining agreements. S. 1161 also would change existing wage requirements. S. 1313/H.R. 2736 would amend the Migrant and Seasonal Agricultural Worker Protection Act to include H-2A workers and to give all agricultural workers the right to collective bargaining. In addition, as discussed above, S. 1161 and S. 1313/H.R. 2736 contain provisions to enable foreign agricultural workers in the United States to become legal permanent residents. (See CRS Report RL30852, *Immigration of Agricultural Guest Workers: Policy, Trends, and Legislative Issues*.)

H-1C Nurses

The H-1C category was established by a 1999 law (P.L. 106-95) as a short-term solution for nursing shortages in a limited number of medically underserved areas. P.L. 106-95 allowed for the issuance of 500 nonimmigrant visas to nurses each year for 4 years, with the proviso that the number of visas issued annually for employment in smaller states could not

exceed 25 and the number issued for employment in larger states could not exceed 50. The law limited an H-1C nurse's stay to 3 years.

Pending bills propose to reform the H-1C program in response to concerns that it has not provided adequate relief from nursing shortages. **H.R. 2809** would amend the H-1C admission requirements to increase the total number of visas available annually to 1,000 and to increase the visa limit for larger states to 150. **H.R. 2705** and **S. 1259** would make more extensive changes to the H-1C program. H.R. 2705 would increase the number of visas available annually to 195,000. S. 1259 would not place any limit on the number of visas available. Both bills would eliminate the state caps, extend the maximum stay to 6 years, and make the program permanent. Among other significant changes, both bills would eliminate the requirement that the employer facility be located in a medically underserved area.

Border Security

Providing adequate border security has long been a challenge for policy makers, since doing so must be balanced against other interests, such as facilitating legitimate cross-border travel and commerce and protecting civil liberties. Congress and the Bush Administration are reevaluating the level of border security maintained by the United States in light of the recent attacks on the World Trade Center and the Pentagon.

The principal federal agencies responsible for providing border security through the administration and enforcement of immigration law are INS, the Department of State's (DOS's) Bureau of Consular Affairs, and the Department of the Treasury's U.S. Customs Service. At DOS consular posts overseas, consular officers adjudicate visa applications for foreign nationals wishing to come to the United States. At international ports of entry, travelers are screened for admission into the United States by INS and Customs inspectors. These agencies maintain "lookout" systems for the purpose of excluding undesirable persons.

Historically, the U.S.-Mexico border has received more resources than the U.S.-Canada border. The U.S.-Mexico border has a long-standing history of illegal immigrants attempting to gain entry into the United States as well as of smuggling drugs and human beings. By one account, the U.S.-Mexico border and its coastal areas account for 80% of all illegal traffic into the United States. The larger of the two borders by some 2,000 miles, the U.S.-Canada border, however, has recently begun to receive attention because of the increase in illegal activities (e.g., smuggling) occurring there. Moreover, in light of the events of September 11, 2001, and concerns about possible terrorist operatives in Canada, the 107th Congress has directed its attention to the U.S.-Canada border. The USA PATRIOT Act (**P.L. 107-56**) was signed into law on October 26, 2001. Among its provisions to enhance border security, the Act authorizes the Attorney General to triple the number of INS border patrol personnel and INS inspectors at the northern border, and authorizes \$50 million for INS to make technological improvements and to acquire additional equipment for the northern border.

There are several other legislative proposals before the 107th Congress that include immigration-related border security provisions (**H.R. 3205/S. 1618**, **H.R. 3129**, and **H.R. 3525/S. 1749**), but only one bill, the Enhanced Border Security and Visa Entry Reform Act (H.R. 3525), has received action in both houses. The House passed the bill twice, on December 19, 2001, and March 12, 2002. The Senate amended and passed the bill on April

18, 2002. The House agreed to the Senate amendments on May 8, 2002. President Bush signed H.R. 3525 into law on May 14, 2002 (**P.L. 107-173**).

P.L. 107-173 increases the number of INS inspectors and support staff and the number of INS investigators and support staff by 200 per group for each fiscal year from FY2003 through FY2006. It authorizes appropriations for personnel training, for increased resources for INS and Consular Affairs, and for technology and infrastructure improvements. It also addresses the need for increased interagency data sharing pertaining to the admissibility and removability of aliens through the development of an “interoperable electronic data system.”

Other major provisions of P.L. 107-173 aim to increase entry/exit control mechanisms at international ports of entry and make travel documents more difficult to alter or counterfeit. (DOJ’s proposal for an entry/exit registration system is discussed in a separate section below.) IIRIRA included such provisions, but they were later amended. Section 110 of IIRIRA required the development of an automated system to record the entry and exit of every alien arriving and departing from the United States by September 30, 1998. This deadline was extended to March 30, 2001, in P.L. 105-277. P.L. 105-277 further amended IIRIRA §110 by prohibiting significant disruption of trade, tourism, or other legitimate cross-border traffic once the entry/exit system is in place. An additional amendment to §110 (in P.L. 106-215) delayed immediate implementation of an automated entry/exit system at all ports of entry. P.L. 107-173 requires: implementation of an integrated entry and exit database; machine-readable, tamper-resistant travel documents that use biometric identifiers, such as fingerprints; biometric data readers and scanners at all ports of entry; and greater tracking of stolen passports. H.R. 3525 also extends until September 30, 2002, the deadline for border crossing identification cards to contain a biometric identifier that matches the biometric characteristic of the card holder. (See CRS Electronic Briefing Book, *Terrorism*, page on “Border Security Issues and Options,” available at [<http://www.congress.gov/brbk/html/ebter124.html>]; and CRS Report RL31019, *Terrorism: Automated Lookout Systems and Border Security Options and Issues*. For information on counterterrorism and immigration law, see CRS Electronic Briefing Book, *Terrorism*, page on “Immigration Law: Legal Frameworks,” available at [<http://www.congress.gov/brbk/html/ebter133.html>].)

Nonimmigrant Registration and Tracking

On June 5, 2002, DOJ outlined a proposal for a “National Security Entry-Exit Registration System” for all nonimmigrants from Iran, Iraq, Libya, Sudan, and Syria and certain nonimmigrants from other countries determined by DOS and INS to pose potential national security risks. Upon arrival in the United States, an alien subject to this system would be fingerprinted, photographed, and checked against databases of known criminals and terrorists, and would be asked for information about his or her plans while in the country. If the alien remained in the United States for 30 days, he or she would be required to report to an INS office and provide more detailed information by the 30-day mark and annually thereafter. The alien also would have to notify INS of any change of address within 10 days. Upon departure, the alien would be required to report his or her exit to INS. In addition, according to the proposal, certain aliens from designated countries already residing in the United States may also be required to provide information to INS about their stay. DOJ plans to publish proposed regulations to establish this new registration system. The proposal would then be subject to a comment period.

The DOJ fact sheet on the proposal cites requirements under INA §262 that aliens in the United States for 30 days be registered and fingerprinted, as well as the Attorney General's authority under INA §263 to prescribe special regulations for the registration and fingerprinting of any class of aliens, other than LPRs. Pursuant to INA §263, INS published a rule in December 1993 stating that upon public notice in the Federal Register, the Attorney General may require that nonimmigrants from designated countries be registered and fingerprinted upon arrival in the United States. Currently, these requirements apply to nationals from Iran, Iraq, Libya, and Sudan. INA §265(b) further authorizes the Attorney General to require upon 10 days notice that nationals of any foreign state who are in the United States and are subject to registration notify the Attorney General of their current addresses and furnish such additional information as the Attorney General may require. (The DOJ fact sheet on the proposal is available at [<http://www.usdoj.gov:80/ag/speeches/2002/natlsecentryexittrackingsys.htm>].)

Admissions Policy

The INA spells out a strict set of admissions criteria and exclusion (inadmissibility) rules for all foreign nationals, whether coming permanently as immigrants (i.e., LPRs) or temporarily as nonimmigrants. Aliens are inadmissible to the United States on the following bases: security and terrorist concerns; health-related grounds; criminal history; public charge (e.g., indigence); seeking to work without proper labor certification; illegal entry and immigration law violations; lack of proper documents; ineligibility for citizenship; and previous removal. With the notable exception of foreign visitors entering through the Visa Waiver Program (discussed below), immigrants and nonimmigrants must obtain visas from DOS consular officers abroad in order to legally enter the United States. Aliens applying for visas must satisfy the consular officers that they are not ineligible for visas under the above grounds of inadmissibility. Similarly, aliens must satisfy INS inspectors upon entry to the United States that they are not ineligible for admission under any of these grounds.

The PATRIOT Act amends the INA's inadmissibility provisions to broaden somewhat the terrorism grounds for excluding aliens. The INA already barred the admission of any alien who has engaged in or incited terrorist activity, is reasonably believed to be carrying out a terrorist activity, or is a representative or member of a designated foreign terrorist organization. To this list of inadmissible aliens, the PATRIOT Act adds representatives of groups that endorse terrorism, prominent individuals who endorse terrorism, and spouses and children of aliens who are deportable on terrorism grounds on the basis of activities occurring within the previous 5 years. **S. 864**, which was reported by the Senate Judiciary Committee on April 25, 2002, would further broaden the security and terrorism grounds of inadmissibility to exclude aliens who have participated in the commission of acts of torture or extrajudicial killings abroad. S. 864 also would make aliens in the United States removable on these same grounds.

Other immigration provisions of the PATRIOT Act seek to improve the visa issuance process by providing access to relevant electronic information. These provisions authorize the Attorney General to share data from domestic criminal record databases with the Secretary of State for the purpose of adjudicating visa applications. Title III of P.L. 107-173 likewise aims to increase access to electronic information in the context of visa issuances,

while also requiring additional training for consular officers who issue visas. (See CRS Report RL31381, *U.S. Policy on Temporary Admissions*.)

Visa Waiver Program (VWP)

The VWP allows nationals from certain countries to enter the United States for 90 days as temporary visitors for business or pleasure without first obtaining a visa from a U.S. consulate abroad. By eliminating the visa requirement, this program facilitates international travel and commerce and eases consular office workloads abroad, but it also bypasses the first step by which foreign visitors are screened for admissibility when seeking to enter the United States. The Visa Waiver Pilot Program was established as a temporary program by the Immigration Reform and Control Act of 1986 (P.L. 99-603), and was made permanent on October 30, 2000, through the enactment of the Visa Waiver Permanent Program Act (P.L. 106-396). The program includes 28 countries. Due to the recent economic collapse in Argentina and the increase in the number of Argentine nationals attempting to use the VWP to enter the United States and remain illegally past the 90-day period of admission, that country was removed from the VWP in February 2002. Additionally, the PATRIOT Act directs the Secretary of State each year until 2007 to ascertain that VWP countries have established programs to develop tamper-resistant passports.

To reduce the likelihood that terrorists will be able to enter the United States under the VWP, P.L. 107-173 places new requirements on the program. It requires that all VWP countries implement systems for the timely reporting of stolen passports, especially stolen blank passports, that all aliens who enter under the VWP are checked against a lookout system prior to admission to the United States, and that the Attorney General review the countries in the VWP every 2 years. Several other bills pending in the 107th Congress would further tighten VWP-related requirements. (See CRS Report RS21205, *Immigration: Visa Waiver Program*.)

Monitoring of Foreign Students

The September 11, 2001 terrorist attacks by foreign nationals — reportedly including several terrorists on student visas — have prompted a series of questions about foreign students in the United States and the extent to which the U.S. government monitors their admission and presence in this country. The arrival of letters on March 11, 2002 in which the INS notified a Florida flight school that two of the September 11 terrorists had been approved for foreign student visas further heightened concerns.

The three visa categories used by foreign students are: F visas for academic study, M visas for vocational study, and J visas for cultural exchange. The number of student visas issued has more than doubled over the past 2 decades. In FY1979, the total number of foreign student and cultural exchange visas issued by DOS consular officers was 224,030 and comprised 4% of all nonimmigrant visas issued. In FY1999, DOS issued 537,755 visas to F, J, and M nonimmigrants, making up 9% of all nonimmigrant visas issued.

In 1996, Congress enacted a provision that established a foreign student monitoring system and required educational institutions to participate as a condition of continued

approval to enroll foreign students. The PATRIOT Act includes provisions to expand the foreign student tracking system and authorizes appropriations for the foreign student monitoring system, which had been funded through \$95 fees paid by the foreign students.

P.L. 107-173 has provisions intended to close perceived loopholes in the admission of foreign students. Specifically, Title V establishes electronic means to monitor and verify: documentation of acceptance of a student by an approved school or designated exchange program; transmittal of documentation to DOS; issuance of a nonimmigrant visa to the student or exchange visitor; admission of the student or exchange visitor to the United States; notice to the school or exchange program that the nonimmigrant has been admitted to the United States; registration and enrollment of the nonimmigrant in the school or exchange program; and any other relevant act by the nonimmigrant, including changing schools or programs. The law also creates (within 120 days of enactment) a transitional program (until the monitoring system is fully implemented) that would restrict issuance of an F, J, or M visa unless DOS has received electronic evidence from the approved institution that the alien is accepted and the consular officer has adequately reviewed the applicant's record. (See CRS Report RL31146, *Foreign Students in the United States: Policies and Legislation*.)

Other Legislation and Issues

Refugees

Typically, the annual number of refugee admissions and their allocation among refugee groups are determined at the start of each fiscal year by the President after consultation with Congress. Due to the events of September 11, 2001, however, President Bush did not sign the Presidential Determination setting the FY2002 refugee numbers until November 21, 2001. Presidential Determination No. 02-04 authorizes a FY2002 refugee ceiling of 70,000, a decrease from the FY2001 ceiling of 80,000. Some Members of Congress and others have expressed concern that the United States may fall short of the FY2002 ceiling. To investigate that issue and others related to refugee admissions, the Senate Immigration Subcommittee held an oversight hearing in February 2002.

P.L. 107-116, the FY2002 Labor, Health and Human Services, and Education Appropriations Act, extends the "Lautenberg amendment" through FY2002. That provision requires the Attorney General to designate categories of former Soviet and Indochinese nationals for whom less evidence is needed to prove refugee status, and provides adjustment to LPR status for certain Soviet and Indochinese nationals denied refugee status.

P.L. 107-185 revises and re-enacts for FY2002 and FY2003 a provision commonly referred to as the "McCain amendment." The McCain amendment made the adult children of certain Vietnamese refugees eligible for U.S. refugee resettlement. Among its provisions, P.L. 107-185 would enable adult children previously denied resettlement to have their cases reconsidered. **H.R. 2833**, which was passed by the House in September 2001, would further expand eligibility for refugee resettlement to Vietnamese nationals who were eligible for any U.S. refugee program but who were deemed ineligible due to administrative error or who were unable to meet application deadlines.

Resettlement Funding. P.L. 106-104 reauthorized HHS's Office of Refugee Resettlement program through FY2002. P.L. 107-116 provides \$460.2 million for this program. (See CRS Report RL31269, *Refugee Admissions and Resettlement Policy*.)

Legal Immigration and Sponsorship

Subtitle C of the PATRIOT Act contains provisions that preserve the immigration benefits of the noncitizen victims of September 11 and their families. Among these provisions are those that ensure that aliens whose pending family-based or employment-based immigrant petitions were revoked, voided, or nullified due to the terrorist attacks (e.g., the family member petitioning for them died) continue to have valid petitions, and that waive the public charge ground of inadmissibility for them.

More broadly, the Family Sponsor Immigration Act of 2001 (**P.L. 107-150**) provides that in cases where a citizen or LPR has petitioned for permanent resident status for an alien resident and the petitioner has died before the alien has been granted this status, and where the Attorney General determines for humanitarian reasons that revocation of the petition would be inappropriate, a close family member other than the original petitioner can sign the necessary affidavit of support. (See CRS Report RL31114, *Noncitizen Eligibility for Major Federal Public Assistance Programs: Policies and Legislation*.)

Child-Related Legislation

H.R. 1209, which was passed by the House on June 6, 2001, would amend the INA to set new rules for determining whether an alien is a child for purposes of classification as an immediate relative. (Under the INA, a "child" is an unmarried person under age 21.) On May 16, 2002, the Senate Judiciary Committee reported both H.R. 1209 and a related broader Senate bill (**S. 672**). The committee amended both bills to make them identical. As reported, the bills would address the issue of the children of citizens "aging out" of the definition of "child" while their classification petitions are pending. The measures likewise would address the aging out issue with respect to the children of LPRs, asylees, and refugees.

Other Legislation Receiving Action

S Visa for Criminal and Terrorist Informants. **P.L. 107-45** amends the INA to make permanent §101(a)(15)(S), the provision that allows aliens with critical information on criminal or terrorist organizations to come into the United States in order to provide that information to law enforcement officials. Under this law, aliens who provide critical information may adjust to LPR status. The numerical limits on this category are 200 per year for criminal informants and 50 per year for terrorist informants. (See CRS Report RS21043, *Immigration: S Visas for Criminal and Terrorist Informants*.)

Work Authorization for Certain Nonimmigrant Spouses. **P.L. 107-124** amends the INA to provide work authorization for the nonimmigrant spouses of treaty traders or treaty investors on E visas. **P.L. 107-125** similarly amends the INA to provide work authorization for the nonimmigrant spouses of intracompany transferees on L visas. P.L. 107-125 further amends the INA to reduce from 1 year to 6 months the period of time that

certain intracompany transferees have to be continuously employed overseas by a petitioning employer before applying for admission to the United States.

Employment Eligibility Verification Pilot Programs. P.L. 107-128 amends a section of IIRIRA that directed the Attorney General to conduct three pilot programs for employment eligibility confirmation (i.e., to confirm that new hires are legally eligible to work). Each of the programs was to be in effect for 4 years. The first program to be implemented, known as the “basic pilot program,” expired in November 2001. P.L. 107-128 extends the life of each program from 4 to 6 years.

Driver’s Licenses Issued to Nonimmigrants. H.R. 4043 would prohibit federal agencies from accepting driver’s licenses or comparable documents for identification purposes unless the issuing state requires that licenses or documents given to nonimmigrants expire no later than the expiration date of their nonimmigrant visas. H.R. 4043 was approved by the House Immigration Subcommittee on May 2, 2002.

Other Pending Bills. H.R. 4597, approved by the House Immigration Subcommittee on May 2, 2002, would make inadmissible to the United States any nonimmigrant owing more than \$2,500 in child support. **H.R. 4558**, also approved by the House Immigration Subcommittee on May 2, would extend until the end of FY2006 a visa program that enables young adults from Ireland to work temporarily in the United States.

LEGISLATION

P.L. 107-45 (S. 1424)

Amends INA to provide permanent authority for the “S” nonimmigrant category. Passed Senate on September 13, 2001. Passed House on September 15, 2001. Signed on October 1, 2001.

P.L. 107-56 (H.R. 3162)

Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001. Passed House on October 24, 2001. Passed Senate on October 25, 2001. Signed on October 26, 2001.

P.L. 107-116 (H.R. 3061)

Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2002. Reported by Appropriations Committee (H.Rept. 107-229) on October 9, 2001. Passed House, as amended, on October 11, 2001. Passed Senate, as amended, on November 6, 2001. House agreed to conference report (H.Rept. 107-342) on December 19, 2001; Senate agreed on December 20, 2001. Signed on January 10, 2002.

P.L. 107-124 (H.R. 2277)

Amends INA to provide work authorization for nonimmigrant spouses of treaty traders and treaty investors. Reported by Judiciary Committee (H.Rept. 107-187) on August 2, 2001. Passed House on September 5, 2001. Reported by Senate Judiciary Committee (without written report) on December 13, 2001. Passed Senate on December 20, 2001. Signed January 16, 2002.

P.L. 107-125 (H.R. 2278)

Amends INA to provide work authorization for nonimmigrant spouses of intracompany transferees, and to reduce the period of time that certain intracompany transferees have to be continuously employed overseas before applying for admission to the United States. Reported by Judiciary Committee (H.Rept. 107-188) on August 2, 2001. Passed House on September 5, 2001. Reported by Senate Judiciary Committee (without written report) on December 13, 2001. Passed Senate on December 20, 2001. Signed January 16, 2002.

P.L. 107-128 (H.R. 3030)

Basic Pilot Extension Act of 2001. Reported by Judiciary Committee (H.Rept. 107-310, Part I) on November 30, 2001. Passed House, as amended, on December 11, 2001. Passed Senate on December 20, 2001. Signed on January 16, 2002.

P.L. 107-150 (H.R. 1892)

Family Sponsor Immigration Act of 2001. Reported by Judiciary Committee (H.Rept. 107-127) on July 10, 2001. Passed House, as amended, on July 23, 2001. Reported by Senate Judiciary Committee (without written report) on December 13, 2001. Passed Senate, as amended, on December 20, 2001. House agreed to Senate amendment on February 26, 2002. Signed on March 13, 2002.

P.L. 107-171 (H.R. 2646)

Farm Security and Rural Investment Act of 2002. Reported by Agriculture Committee (H.Rept. 107-191, Part I) on August 2, 2001; supplemental report filed by Agriculture Committee (H.Rept. 107-191, Part II) on August 31, 2001. Reported by International Relations Committee (H.Rept. 107-191, Part III) on September 10, 2001. Passed House, as amended, on October 5, 2001. Passed Senate, as amended, on February 13, 2002. House agreed to conference report (H.Rept. 107-424) on May 2, 2002; Senate agreed on May 8, 2002. Signed on May 13, 2002.

P.L. 107-173 (H.R. 3525)

Enhanced Border Security and Visa Entry Reform Act of 2002. Passed House, as amended, on December 19, 2001. Passed Senate, as amended, on April 18, 2002; Senate passed related enrolling resolution (**S.Con.Res. 106**) on May 7, 2002. House agreed to Senate amendments and to resolution on May 8, 2002. Signed on May 14, 2002.

P.L. 107-185 (H.R. 1840)

Extends eligibility for refugee status for the unmarried sons and daughters of certain Vietnamese refugees. Reported by Judiciary Committee (H.Rept. 107-254) on October 29, 2001. Passed House, as amended, on October 30, 2001. Reported by Senate Judiciary Committee (without written report) on December 13, 2001. Passed Senate on May 10, 2002. Signed on May 30, 2002.

H.R. 1209 (Gekas)

Child Status Protection Act of 2001. Reported by Judiciary Committee (H.Rept. 107-45) on April 20, 2001. Passed House, as amended, on June 6, 2001. Reported by Senate Judiciary Committee (without written report) on May 16, 2002.

H.R. 1885 (Gekas)

Section 245(i) Extension Act of 2001. Passed House on May 21, 2001. Passed Senate, as amended, on September 6, 2001. House agreed to Senate amendment with amendments pursuant to **H.Res. 365** on March 12, 2002.

H.R. 2833 (C. Smith)

Viet Nam Human Rights Act. Passed House on September 6, 2001.

H.R. 3231 (Sensenbrenner)

Immigration Reform and Accountability Act of 2001. Reported by Judiciary Committee (H.Rept. 107-413) on April 19, 2002. Passed House, as amended, on April 25, 2002.

H.R. 4090 (Herger)

Personal Responsibility, Work, and Family Promotion Act of 2002. Reported by Ways and Means Committee (H.Rept. 107-460, Part I) on May 14, 2002. Provisions incorporated into **H.R. 4737**.

H.R. 4737 (Pryce)

Personal Responsibility, Work, and Family Promotion Act of 2002. Passed House on May 16, 2002.

S. 672 (Feinstein)

Child Status Protection Act of 2001. Reported by Judiciary Committee (without written report) on May 16, 2002.

S. 864 (Leahy)

Anti-Atrocity Alien Deportation Act of 2001. Reported by Judiciary Committee (S.Rept. 107-144) on April 25, 2002.

S. 2452 (Lieberman)

National Homeland Security and Combating Terrorism Act of 2002. Ordered reported by Governmental Affairs Committee on May 22, 2002.