

Kennedy – McCain Bill

- I. Border Security -
 - A. National Strategy for Border Security
 - i. Evaluate ports of entry
 - ii. Comprehensive review of border security that is appropriate, cost-effective, and practical
 - a. intelligence
 - b. technology
 - c. equipment
 - d. personnel
 - e. training
 - iii. risk-based priority setting
 - iv. definition of relationships between federal, state, and local officials and development of a plan to facilitate coordination
 - v. focus on research and development of new technologies
 - vi. coordination between DHS and DOS on smuggling and trafficking
 - vii. identification of low-risk travelers to facilitate cross-border travel
 - viii. DHS will have 1 year to develop the National Strategy
 - a. must include costs
 - b. must include training and personnel requirements
 - c. must include cost-benefit analysis for new technology
 - d. revisions to plan must be submitted annually
 - e. progress report must be submitted annually
 - ix. Budget will be granted to DHS to conduct the Study for 5 years
 - B. Border Security Advisory Committee
 - i. committee will advise DHS in developing the NSBS
 - ii. will include representatives from border states, law enforcement officials, and others
 - iii. committee will be non-partisan
 - C. Technology Use for Border Security
 - i. Aerial surveillance technology
 - a. Sixty days to develop and implement a plan
 - b. consult with DOD on new technologies
 - c. evaluate cost-effectiveness and liability issues
 - d. requires use of unmanned surveillance craft
 - e. reporting on program annually
 - ii. ground surveillance technology – focus on human smuggling
 - a. interoperability of databases
 - b. personnel training
 - c. new visas for victims of smuggling
 - d. thorough investigation of smuggling rings
 - e. cooperation through DOS with foreign governments
 - f. annual reports on plan
 - D. North American Security Initiative
 - i. negotiate agreement with Mexico on screening of third-country nationals

- ii. technical assistance to Mexico for stronger immigration control
 - iii. assess needs of Central American governments for border security, including financial, technical support, law enforcement assistance, and information sharing
 - iv. special focus on the border between Mexico, Guatemala, and Belize
 - v. focus on Central American gangs
 - a. assess impact of US deportations of violent criminals
 - b. develop database of Central American gangs
 - c. develop re-integration programs for deportees
- II. State Alien Criminal Assistance
 - A. Appropriates up to \$950 million per year by 2008 for the detention of undocumented migrants
 - B. Provides federal reimbursement up to \$200 million per year to states for court and attorney costs, detention costs, criminal proceedings costs related to processing undocumented migrants
- III. Essential Worker Visa Program (H5-A visa)
 - A. Qualification for non-skilled labor jobs
 - i. prove they are capable of doing the job
 - ii. must offer proof of employment
 - iii. pay \$500 application fee for the visa plus processing and adjudication costs
 - iv. must pay for a medical examination, including immunization status
 - v. if the migrant has been in the US prior to the passage of this bill and meets all criteria based on health, security, and employment, they may pay \$1,500 fine to receive an H5-A visa
 - vi. migrants residing in the US prior to the passage of the bill will not be required to leave the country, and all orders of deportation against them will be waived if they qualify for the H5-A visa
 - B. Validity of H5-A Visas
 - i. an H5-A visa is valid for 3 years, and is renewable once for one 3-year period
 - ii. an H5-A visa will terminate if the migrant is unemployed for 45 days, and the migrant will be required to return to their home country
 - iii. if the migrant receives another job offer once they have returned home within the life of a 3-year H5-A visa, the visa will still be valid
 - C. Mobility of H5-A Visa Holders
 - i. Migrants may travel to and from the U.S. without limitation during the life of their visa
 - ii. Time spent outside the U.S. will not extend the life of the visa
 - D. Portability of H5-A Visas
 - i. a H5-A visa holder may change jobs without applying for a new visa during the 3 year period of validity
 - ii. a H5-A visa holder will notify DHS of a change of address
 - E. Bar to Renewal
 - i. A willful violation of the terms of the visa (crimes, etc.) will result in inadmissibility for renewal

- ii. A migrant may apply for a waiver of the last section for technical violations, inadvertent errors, or violations where the migrant is not at fault

F. Employers hiring H5-A workers will be required to follow all federal, state, and local laws

G. Worker Protections

- i. An H5-A worker may not be considered an independent contractor
- ii. An H5-A worker is protected by all federal, state, and local laws that protect U.S. workers
- iii. An H5-A worker will have all the federal, state, and local tax responsibilities as a U.S. worker
- iv. An H5-A worker is entitled to the same wages, benefits, and work conditions as a U.S. worker
- v. An H5-A worker may not be used to replace striking laborers
- vi. It will be illegal for employers to threaten H5-A workers with the loss of their visas
- vii. An H5-A worker shall be protected from being fired for reporting violations of labor rights, or cooperating with investigations against their employer

H. Recruitment

- i. An employer must disclose the terms and conditions of employment to an H5-A worker at the time of recruitment, and these materials will be provided to the worker in English and their native language
- ii. H5-A workers will not be charged for being recruited for a job
- iii. An employer must report every two years on any employment brokers that they have hired
- iv. If an employer uses the services of a broker to hire H5-A workers, those brokers must be registered with the Department of Labor
- v. Brokers will be licensed for 2 years
- vi. Violations of broker licenses will be sanctionable, and the worker as well as the employer may qualify for compensation due to violations
- vii. Violations of broker regulations must be filed within 12 months of the violation
- viii. The Secretary of Labor shall have 30 days to investigate and resolve any claims against broker regulations, and has 60 days to inform the affected parties
- ix. Compensation can include back wages, fringe benefits and civil monetary penalties (monetary limits are set for the type of violation), and criminal charges not to exceed 6 months prison time or \$35,000 or both

I. Visa Quotas

- i. an additional 400,000 visas shall be available each year
- ii. if 400,000 visas are allocated within the first quarter of the year, then an additional 20% shall be made available for that year and the next year
- iii. if 400,000 visas are allocated by the first half of the year, then an additional 15% shall be made available for that year and the next year

- iv. if 400,000 visas are allocated by the third quarter of the year, than an additional 10% shall be made available for that year and the next year
- v. if 400,000 visas are allocated by the end of the year, than an additional 10% shall be made available for that year and the next year
- vi. if 400,000 visas are not allocated by the end of the year, than the number of visas available in the next year shall decrease by 10%
- vii. 50,000 visas will be reserved each year for migrants from countries that have seen 10% of their population migrate in the last 20 years. If those visas are not used in the first half of the year, they will be made available to any qualified applicant.
- viii. The Secretary of DHS will have the authority to take additional measures to prevent illegal migration.

J. Adjustment to Lawful Permanent Resident Status

- i. an H5-A visa may be converted to permanent resident status upon the request of the employer at any time
- ii. an H5-A visa may be converted to permanent resident status upon request from the migrant after they have held the H5-A visa in good standing for 4 years.
- iii. To pursue permanent resident status, the migrant must be resident in the U.S.
- iv. To pursue permanent resident status, the migrant must take English and U.S. civics classes
- v. Pursuing permanent resident status shall not make a migrant ineligible for an H5-A visa
- vi. The limitations on stay in the U.S. (3 years) shall not apply to an H5-A visa holder who is in the process of adjusting their status to permanent residency, or if they have a labor dispute claim in process

K. Essential Worker Visa Program Task Force

- i. a Task Force will be established to study the H5-A visa program, and to make recommendations to congress on the program
- ii. The committee will be bi-partisan, and consist of 10 members
- iii. Committee members may not be government employees
- iv. The committee will be formed 6 months after the H5-A visa program takes effect
- v. The Committee does not have explicit responsibilities for examining border security – only the functioning of the visa program
- vi. The Committee shall report to Congress 2 years after its formation, and issue a final report 4 years after the initial report

L. Electronic Job Registry

- i. The Department of Labor will create a job registry to announce vacancies that qualify for H5-A workers
- ii. The employer must list the job in the database for 30 days before the job can be opened to foreign workers
- iii. The employer must maintain records for one year demonstrating why any US workers who apply for the job were not hired

IV. Enforcement

A. Document requirements

- i. visas and immigration documents must be tamper-proof, and use biometric identifiers
- ii. documents will include name, date, place of birth, visa number, SSN, immigration status, and expiration date of visa

B. Employment Eligibility Confirmation System

- i. The Secretary of DHS and the Social Security Commissioner will establish system to confirm employment
- ii. The SS Commissioner will use the system to respond to inquiries made by employers to verify employment eligibility
- iii. It will be an electronic system
- iv. Immigration documents should contain encrypted information that will allow for confirmation of employment eligibility
- v. The system will provide either a confirmation or tentative nonconfirmation within one business day.
- vi. In the case of nonconfirmation, the Secretary of DHS and the SS Commissioner will establish a secondary verification process that will take no longer than 10 days.
- vii. An employee has 10 working days to contest a second nonconfirmation.
- viii. An employer cannot use the database discriminately, or before making an offer of employment.
- ix. An employer cannot take adverse action against someone who receives a tentative nonconfirmation
- x. The employee database will include the following information for non-U.S. citizens
 - a. Country of origin
 - b. Immigration status
 - c. Employment eligibility
 - d. Occupation
 - e. Metropolitan area of employment
 - f. Annual compensation paid
 - g. Period of employment eligibility
 - h. Employment start date
 - i. Employment end date
- xi. The database will reverify employment eligibility for everyone in the system once a year
- xii. The SS Commissioner will determine an appropriate timetable for implementation of the system
- xiii. Employers must verify the status of a new employee within 3 days of hire, and notify the employee that the system can be used to verify immigration status
- xiv. The SS Commissioner will develop an interim system to verify employment status until the Employment Eligibility System is operational.
- xv. The Comptroller General of the US will submit a report to Congress on the system after the second and third year that the system is in effect, which will include an assessment of the impact of the system, the accuracy

of the information in the database, and an assessment of the privacy of the system, and recommendations for changes.

- C. Entry and Exit Data System
 - i. the Secretary of DHS will have authority over the implementation of Entry and Exit Data Systems
 - ii. requires biometric, machine-readable information to be taken from migrants at the point of entry into or departure from the US to ensure they match the information on their visas.
- D. Department of Labor Investigative Authority
 - i. The Secretary of DOL may begin an investigation into an employer if reasonable cause exists to believe the employer is out of compliance
 - ii. The Secretary of DOL will monitor the Employment Eligibility Confirmation System to determine reasonable cause, and can consider the following
 - a. Whether an employer's submissions to the system generate a high number of tentative nonconfirmations
 - b. Whether an employer rarely submits information to the system
 - c. Whether employees rarely pursue the secondary verification process
 - d. Other indicators of illicit, inappropriate, or discriminatory use of the system
 - iii. employer fines for violations are doubled, and can reach up to \$20,000 per employee
- V. Promoting Circular Migration Patterns
 - A. Labor Migration Facilitation Programs
 - i. Secretary of DOS will enter into agreements with foreign governments of countries with large numbers of workers in the U.S.
 - ii. Program will facilitate acquisition of H5-A visas, create economic incentives for migrants to return to their home countries, and assist foreign governments in tracking their citizens while in the U.S., and facilitate travel between the two countries.
 - B. A non-binding sense of the Congress that recognizes the links between the economy in Mexico and migration to the U.S. It encourages greater implementation of the "Partnership for Prosperity." No binding legal language in this section.
- VI. Family Unity and Backlog Reduction
 - A. Increase the cap on family visas to 480,000 per year
 - B. Allow visas not issued one year to be added to the cap for the following year
 - C. Increase the cap on employment-based visas to 290,000 per year
 - D. Allow visas not issued one year to be added to the cap for the following year
 - E. Increasing the country caps on visas from 7% of the total to 10%
 - F. Exempts immediate family members from the numerical caps for family visas
 - G. Allows widows and orphans to qualify for family visas if the application for a visa was submitted prior to the U.S. citizen or permanent resident's death
 - H. Drops the level of financial support guaranteed by the sponsor from 125% to 100% of foreseeable costs

VII. H-5B Nonimmigrants

A. Legalization of undocumented migrants

- i. allows migrants who were in the U.S. illegally before the passage of this act to qualify for a H-5B employment visa
- ii. allows the spouses and children of an H-5B visa applicant to also apply for an H-5B visa
- iii. allows battered or abused former spouses and children of H-5B visa applicants to apply for an H-5B visa if they were living in the U.S. before the passage of this act
- iv. applicants for H-5B visas will be subject to the same security and medical background checks as applicants for an H5-A visa
- v. requires an H-5B visa applicant to have been employed before the passage of this act up to the time of the passage of this act
- vi. Previous employment must be verified by a federal agency such as the Social Security Administration, the IRS or other federal, state, or local agencies, an employer, or a labor union or day labor center
- vii. If the above records are not available, a migrant may provide 2 of the following documents to certify employment in the U.S.
 - viii. Bank records
 - ix. Business records
 - x. Sworn affidavits from non-relatives who can confirm the migrant's employment status
 - xi. Remittance records
- xii. The employment requirements will be waived for any migrant under 21 years of age
- xiii. The employment requirements may be waived with full time attendance at an institution of higher education or secondary school
- xiv. An H5-B visa will be valid for 6 years
- xv. A migrant can not change status from an H5-B visa for the six year duration
- xvi. An H5-B visa can be extended to accommodate the change of status at the end of the six year period. The change of status will be subject to an undetermined fee.
- xvii. A migrant will be required to pay a \$1,000 fine to qualify for an H5-B visa, unless they are under the age of 21.
- xviii. Until the H5-B visa is granted to a migrant, they will qualify for employment authorization, will be able to travel abroad, will not be subject to detention or deportation unless they are deemed ineligible for the visa
- xix. Migrants who are in removal proceedings may apply for an H5-B visa as long as there has been no final administrative decision in their case
- xx. A migrant in deportation proceedings may apply for an H5-B visa despite the deportation order.
- xxi. Migrants will have the right to one appeal for a denial of an H5-B visa
- xxii. A migrant will not be removed from the U.S. while their claim is under appeal

- xxiii. Falsification of information in an application for an H5-B visa will be considered a crime, punishable by up to 5 years in prison.
 - B. Adjustment of status for H-5B visa holders
 - i. A H5-B visa holder may apply for permanent residency in the U.S.
 - a. Must prove employment during their status as H5-B
 - b. Must meet the English and U.S. civics education requirements
 - c. Must pay a \$1,000 fine unless they are under the age of 21 plus an application fee
 - d. Passes a medical exam
 - e. Can certify that they have paid all taxes due under their H5-B visa
 - f. Passes a security and background check
 - ii. The spouse and children of H-5B visa holders are eligible for permanent residency during this process
 - C. Employer Protections
 - i. Employers will not be subject to civil or criminal liability for employing an undocumented migrant before the enactment of this Act
 - ii. Employers will not be protected against violations of employment or labor law committed against undocumented migrants before the enactment of this Act
- VIII. Protection Against Immigration Fraud
- A. A migrant has the right to legal representation in applying for a visa, adjustment of status, or other immigration benefits.
 - B. Any person not qualified to offer legal representation to a migrant can face civil and criminal charges for representing a migrant.
 - C. NGOs, charitable organizations, social service organizations, etc. are qualified to ask for status as a legal representative in front of the Board of Immigration Appeals
 - D. Provides an increase in the number of visas for witnesses in criminal investigations or trials
- IX. Civics Integration
- A. Creates the United States Citizenship Foundation, which will support the work of the Office of Citizenship
 - B. Authorizes DHS to establish a competitive grant program to offer civics and English as a Second Language Classes
- X. Promoting Access to Health Care
- A. Secretary of HHS will carry out a study of binational efforts to promote public health and issue recommendations on how to improve public health efforts
 - B. Promote access to health care by extending the authorization of federal reimbursement for hospitals that provide emergency care to undocumented immigrants
 - C. Adds H-5A and H-5B workers to the list of persons for whom hospitals may be reimbursed.
- XI. Miscellaneous
- A. Secretary of DOS and DHS will maintain a count of migrants under the immigrant and nonimmigrant visa categories

- B. Secretary of DOS and DHS will submit quarterly reports to Congress on the number of visas issued, as well as submit a full annual report, to include information on the countries of origin, occupations, areas of residence in the U.S., and compensation for visa holders.
- C. Allocates 53% of the funds collected from fines and fees in the H-5 Visa program (A & B) to the adjudication and implementation of the H-5 Visa program and other provisions of this Act
- D. 10% will be available for border security efforts
- E. 1% to promote awareness of the H-5 visa program and to protect migrants from fraud
- F. 1% to promote civics integration courses, and 2% for the Civics Integration Grant Program
- G. 15% for the Secretary of Labor to enforce labor standards, based on the areas of geographic concentration of migrants registered in the Employment Eligibility Confirmation Database
- H. 15% for the creation and maintenance of the Employment Eligibility Confirmation System
- I. 15% for the Secretary of DOS to comply with the provisions of this Act
- J. 2% for the Secretary of HHS to reimburse hospitals service migrants working in the H-5 visa program
- K. Provides special immigrant status for women and children at risk of harm because of their gender or age
- L. Requires that all migrants must submit fingerprints to DHS within 30 days of entry into the U.S.
- M. Provides asylum status to foreign nationals who have critical reliable information regarding terrorist activities
- N. Exempts volunteers with religious denominations providing humanitarian assistance to migrants from aiding and abetting provisions of law regarding the assistance they provide.