

## The Gutierrez Bill: Where CIR-ASAP Goes Wrong – A Good Legalization and Family Unity Bill – But Unnecessarily Anti-Business



**By Deborah Notkin, AILA Past President**

Unfortunately, that is exactly what the Gutierrez bill is. While there are many excellent provisions on important components of immigration reform, especially family unity and legalization, the employment immigration provisions are overwhelmingly negative and geared to eliminate the employers from having any reasonable input on the specific types of foreign employees that are required in an evolving economy. The overarching provision is the establishment of a “Commission” that would determine U.S. immigration policy (numbers and categories) pertaining to temporary and permanent workers and well as employment based permanent residence. A commission of seven “experts” would report to both houses of Congress annually the types and numbers of workers that could enter the U.S. Unless both houses of Congress acted to block them (a rarity in today’s world), the Commission’s “recommendations” would become the law of the land.

There are a number of reasons why substituting Congress with a commission is a bad idea. First, we don’t have the statistical evidence available to make good measurements on an annual basis. Second, government commissions in DC overwhelmingly end up becoming unelected political entities, with their own agendas, often exceeding their original mission. Third, a politicized commission on such a controversial issue would be especially problematic because it would not be accountable directly to voters as are elected representatives. In a debate on the Commission concept that I attended in New York, proponents were struggled to find even a few examples of Beltway government commissions that worked and did become politicized.

While the bill should be commended for introducing the idea that employers need to take responsibility for utilizing ethical recruiters, and for introducing a few exemptions from the employment based quota for certain types of professionals, it generally negates the legitimacy of corporate needs and lacks any concept of the global economy and the international, competitive personnel market.

Most egregious is that there is nothing in this bill that provides for future workforce needs of non-professional workers, despite all the statistic and historical data of the continuing need the U.S. will have for non-agricultural lesser skilled workers as a baby boomers retire and our birth rates decline. And while the serious unemployment figures in our country have

indeed temporarily lessened the need for foreign workers in some segments, there are many sectors employing lesser skilled workers that still cannot fill workforce needs in this economy.

Supposedly, the substitute for this is a ridiculous proposal that serves no rational purpose. Section 317 entitled "Visa to Prevent Unauthorized Migration," proposes to have a lottery of 100,000 for the next three years which will give preference to citizens from countries historically providing us with our undocumented workforce. No employment offers or family ties are part of the visa which, after three years in transitional visa status, a pathway to conditional permanent residence is provided without the indicia of gainful employment in the U.S. The applicant can lift the conditions by demonstrating that (1) there has been no resettlement in the home country, (2) maintaining good moral character and (3) payment of tax liabilities, if any. One can only wonder if this gives future day workers two lines to stand in, one in their countries as lottery applicants and two, on day worker sites because of the inefficiency of such a system to link up our legitimate employment needs with these foreign nationals.

We desperately need a visa system for future flows that works in a range of economic climates, from boom to bust. We have no program to bring in non-professional skilled and unskilled workers to fill non-seasonal positions. We have had and continue to have chronic shortages in many sectors of our economy. A reasonable provisional visa program for non-professional workers to augment gaps in the domestic workforce is imperative if a legalization program is to avoid committing the mistake of omission in the old Amnesty program of 1987. That omission is the lack of a nonprofessional work visa so needed workers can come here in a safe, legal and orderly fashion. And it is that omission that is responsible for much of our broken system today.

Additional provisions would eliminate the ability of employers to use entry level wages for entry level temporary workers. Forcing employers to pay foreign nationals more than their U.S. worker counterparts is totally absurd. Is this how we think America will benefit from the many foreign nationals who have just graduated from, among other fields, Science, Technology, Engineering, and Mathematics programs? And of course, the unworkable cap on H-1b temporary professional workers in a healthy economy is totally ignored, evidently to be left to the gang of seven commissioners.

It appears that Congressman Gutierrez put his heart and soul into legalization and family unity but left the employment based provisions to be drafted by the most anti-employer parties in this debate. Much is borrowed from the Durbin-Grassley proposed H-1b and L-1b provisions and the Economic Policy Institutes piece on immigration which starts out by labeling employers using foreign workers as participants in indentured servitude.

I have only highlighted a few of the egregious provisions that promise to sink an otherwise good piece of legislation. And this does not serve anyone who sincerely wants to find a solution to the human tragedy faced by undocumented migrants in the United States.

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