



Long, Chang & Associates, L.L.P.

Immigration Attorneys

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DECEMBER 2005

IMMIGRATION NEWSLETTER

VOLUME 1, NUMBER 3



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This Month's Featured Article

Dream Act Provides Hope for Young Immigrants

The end of year 2005 has seen a large number of immigration proposals in the United States. Many of these proposals are focusing on tougher enforcement of existing immigration laws and changes in the numbers of H-1B visas and employment-based green cards.

One significant proposal which was recently introduced in Congress is the "Development, Relief, and Education for Alien Minors (DREAM) Act of 2005" (S. 2075). If passed, the DREAM Act would dramatically improve the lives of young immigrants who otherwise do not have their own separate way of obtaining legal status by giving them an opportunity to obtain green card status. The DREAM Act has been discussed in previous years, but its introduction in the Senate in late November 2005 means that it has a chance of being passed in year 2006.

The DREAM Act would allow certain youths to apply for an adjustment of status (green card) on a conditional basis if they meet the Act's requirements. The main requirements of the DREAM Act at this time the following:

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Dream Act Proposal (Continued from Page 1)

1. The child must have been under the age of 16 at the time he or she entered the United States.
2. The child must have maintained continuous physical presence in the United States for at least 5 years before the DREAM Act becomes law (Continuous physical presence means the child must not have departed from the U.S. for a single period of 90 days or more, or for any periods totaling more than 180 days;
3. The child must be a person of good moral character;
4. The child must not be inadmissible under certain provisions of INA Section 212(a);
5. The child must not be deportable under certain provisions of INA Section 237(a);
6. The child must make an application for benefits under the DREAM act (i.e., there is no automatic benefit);
7. At the time of filing, the child must be (a) enrolled in college; (b) graduated from high school in the U.S.; or (c) earned a general education development certificate (GED) in the U.S.;
8. The child must not have a final order of exclusion, deportation or removal, unless the order was received while the child was under the age of 16.

Under the current DREAM act proposal, a child who meets these eligibility requirements could apply for permanent resident status on a conditional basis for a period of 6 years. In order to remove the conditional basis of permanent resident status obtained by a child under the DREAM act, the child must file an immigration petition with proof that the child, throughout the 6-year period of conditional permanent resident status, has (a) been a person of good moral character, (b) has not abandoned his residence in the United States by leaving the U.S. for more than 1 year, and (c) has obtained a degree from a U.S. college or university, OR has completed at least 2 years of college for a bachelor's or higher degree from a U.S. college or university, OR has served in the U.S. military for at least 2 years and, if discharged, the discharge was honorable. Assuming the conditional basis is removed, the child will retain his or her permanent resident status and can apply for naturalization to become a U.S. citizen.

Those children who meet all of the requirements of the DREAM Act except for the fact that they have not yet graduated from a U.S. high school, obtained a GED or enrolled in a U.S. college, would not be able to obtain a green card until such time as they did. However, such a child who is at least 12 years old and is enrolled full-time in primary or secondary school would be able to apply for what is called a "stay of removal". A "stay of removal" means that the U.S. government would not deport or remove the child from the United States so long as he continued to meet the DREAM Act's requirements. In addition, such a child would be able to apply for employment authorization during that time. Once he or she met the requirement of graduation from a U.S. high school, attainment of a GED or enrollment in a U.S. college, the child could thereafter apply for the conditional permanent resident status described above.

As you can see, the potential benefit to young immigrants is tremendous if the DREAM Act is passed. It is hoped that while Congress debates more stringent immigration proposals and considers how to deal with the problems in employment-based immigration, it will consider passing the DREAM Act on its own. The passage of the DREAM Act would benefit young immigrants, many of whom were brought to

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the United States at a young age and desire the opportunity to continue their life in America. Contact your Senators and Representatives and urge them to pass the DREAM Act!

At Long, Chang & Associates, L.L.P., we will monitor the progress of the DREAM Act and post updates in our NewsFlash section of our website at www.longchangonline.com.

Senate Passes Significant Immigration Reforms

On November 3, 2005, the U.S. Senate approved (by a vote of 52-47) a budget reconciliation bill (S. 1932) which provides the following significant immigration reforms:

1. **Recapture unused employment-based immigrant visas from previous years.** This would increase the number of employment-based immigrant visas by up to 90,000 per year.
2. **Make spouses and children of employment-based immigrants exempt from the annual numerical limits for employment-based immigrant visas.** This means that only the principal applicant will be counted against the employment-based immigrant visa limits. Currently, when an entire family obtains the green card through a principal applicant, each of the family members are counted against the numerical limitation for EB visas. For example, a family of 5 (principal applicant, spouse, and three children) would take only 1 visa number under the proposed legislation, instead of 5 numbers as they currently do. This provision, along with the provision providing for the recapture of up to 90,000 EB visas, would dramatically increase the availability of EB visa numbers, thus reducing or eliminating the EB visa backlogs which have come into play in the past several months.
3. **Add an additional \$500.00 fee to all visa petitions filed under the EB-1, EB-2 and EB-3 categories.**
4. **Allow employment-based beneficiaries to file an adjustment of status (green card) application in the United States even if a visa number is not currently available so long as they pay the additional \$500 fee noted above.** The green card application would not be approvable until such time as an immigrant visa number becomes available. This provision, if passed, has several significant benefits: (a) the applicant and his qualifying family members could file for the green card in the United States; (b) when filing for the green card, the applicant and his qualifying family members could also file for an employment authorization document (EAD or work permit) and a travel document. To do so, the applicants must qualify under the other standard adjustment of status requirements (for example, maintenance of status).
5. **Recapture unused H-1B Number from previous years.** Under this provision, the H-1B cap of 65,000 would be increased by up to 30,000 additional H-1B numbers per year. This would effectively raise the H-1B cap from 65,000 to 95,000 per year. Individuals who would file for one of the additional H-1B numbers after the regular cap is reached would be required to pay an additional fee of \$500.00.
6. **Imposed an additional \$750.00 fee on L-1 petitions.**

These significant reforms have been passed by a narrow margin in the United States Senate. This immigration package must be reconciled with the U.S. House of

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Representatives' budget reconciliation bill which was passed on November 21, 2005. The House version does not include these favorable provisions. Instead, it merely proposes a \$1,500 increased fee of L-1 petitions.

The full Congress must now reach a compromise between the Senate bill (with all of the good immigration provisions listed above) and the House bill (with none of these good immigration provisions). It is expected that some of the good immigration provisions in the Senate bill will survive. Unfortunately, only time will tell which ones.

If the Senate and House of Representatives are able to agree on a package, it would then go the President for his approval. As a result, the Senate package is far from becoming law but it is a significant step in the right direction. The most likely outcome is the passage into law of modified version of the Senate's approved package.

Understanding the Affidavit of Support Requirement in Green Card Cases

Changes to the U.S. immigration laws in the late 1990s introduced the concept of the Affidavit of Support. The Affidavit of Support is an immigration form that is required to be submitted in most family-based and some employment-based applications for permanent residence. Without a properly executed Affidavit of Support in cases where it is required, the application for a green card will not be accepted for filing by the U.S. Citizenship & Immigration Services, nor can the application be approved. This article will address some of the most frequently asked questions regarding the Affidavit of Support requirement.

What is an Affidavit of Support?

An Affidavit of Support is an immigration form (Form I-864) that is required to be submitted in most family-based green card cases and some employment-based green card cases. The Affidavit of Support form is required to be submitted by the sponsor in order to prove to the immigration officials that the sponsor has the ability to maintain an income at a required level set by the United States government. The United States government requires the sponsor to sign an Affidavit of Support because it wants to be sure that the sponsored immigrant will have enough financial support while in the United States and will not have to get financial assistance from the United States government.

What types of cases require an Affidavit of Support?

Almost all family-based green card cases require that an Affidavit of Support be filed along with the Form I-485 (green card application). This includes all marriage-based green card cases.

The only employment-based green card cases which require an Affidavit of Support are those in which the alien has a family relationship with the alien or where the alien has an ownership interest in the employer. Most employment-based green card cases do not require an Affidavit of Support. In recent months, however, our office has seen a number of interview notices in employment-based green card cases which ask for the alien to provide an Affidavit of Support. In those cases, our office has been successful in explaining to the United States Citizenship and Immigration Services why an Affidavit of Support is not required. As a result, the alien has not been required to provide an Affidavit of Support.

Who signs the Affidavit of Support?

Typically, the Petitioner (i.e., the person sponsoring the alien) is required to sign the

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Affidavit of Support. By signing the Affidavit of Support, the Petitioner agrees to provide the sponsored immigrant whatever support is necessary to maintain the sponsored immigrant at an income that is at least 125 percent of the federal poverty guideline.

If the Petitioner is unable to document a sufficient amount of income, then another individual who is willing to accept the obligations of the Affidavit of Support can sign an Affidavit of Support. This person is called a "Joint Sponsor" and must be either a United States citizen or lawful permanent resident. The Joint Sponsor does not have to be related to the sponsored immigrant.

Why is an Affidavit of Support required?

The U.S. immigration laws presume that the sponsored immigrant will likely become a public charge (i.e., financially dependent on the government) unless an Affidavit of Support is filed on his behalf. Without providing the required Affidavit of Support, the green card application cannot be approved.

How much income is required?

The amount of income that a sponsor must be able to document is based on the size of the sponsor's family and the number of immigrants being sponsored in the Affidavit of Support. For example, if a sponsor is married and has 2 children and is sponsoring one other immigrant, the sponsor's family size is considered to be 5 (himself, his spouse, 2 children and 1 sponsored immigrant). For a family of 5, the sponsor must be able to show \$28,262. The required amount of income increases or decreases depending on the size of the sponsor's family and the number of immigrants being sponsored in the Affidavit of Support.

What type of documentation must be submitted with an Affidavit of Support?

A sponsor must provide the following documentation: (1) evidence of U.S. citizenship or green card status; (2) copies of his last year of federal income tax returns and all W-2 forms or 1099 forms; and (3) a current letter of employment. This evidence must show that the sponsor has the ability to maintain an income level at or above 125 percent of the federal poverty guideline. If the primary sponsor cannot demonstrate the required income, then a Joint Sponsor can be used. The Joint Sponsor must separately meet the required income level. Please note that prior to November 23, 2005, the U.S. Citizenship & Immigration Services required a sponsor's last three years of federal income tax returns and all W-2 forms or 1099 forms but now only require a copy of the most recent year of federal income tax returns and W-2 or 1099 forms.

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President Bush Calls for Immigration Reform

In a major immigration speech, President Bush recently proposed what he calls a "comprehensive strategy to reform our immigration system." Speaking in Arizona (a state which is along the U.S. border with Mexico), President Bush touted a 3-part process to reforming U.S. immigration laws: (1) securing our borders from illegal entries; (2) stronger enforcement of existing immigration laws; and (3) a "guest worker" program.

President Bush's speech is significant in that it had a strong focus on enforcing existing immigration laws and stopping illegal entries at the southern border. This focus on enforcement is seen as important to many in the Republican party who do

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not want to reward illegal immigration. President Bush had previously proposed a "guest worker" program in early January 2004 (almost 2 years ago). While he continues to push for that program (which would allow certain illegal workers to gain temporary legal status), the President recognizes that Congress likely will not pass any major immigration reforms in favor of illegal aliens without also passing strong immigration measures to deter illegal immigration.

Following is a breakdown of the President's 3-part strategy for comprehensive immigration reform:

1. Securing the Border

President Bush wants to increase the number of border patrol agents and utilize greater technology to catch illegal aliens at the border. Once caught, the President wants the illegal entrants to be returned promptly to their home countries.

President Bush noted that, under current border policy, many illegal entrants who are caught and released immediately to the other side of the Mexican border. This "catch and release" policy results in many of the same illegal entrants trying over and over again until they make it across the border successfully. The President is pushing for the return of illegal Mexican entrants to the interior of Mexico (i.e., closer to their hometowns) in the hopes that this would decrease the chance of them trying to cross the border once again.

2. Worksite Enforcement

President Bush also called for greater enforcement of U.S. immigration laws with respect to the employment of illegal aliens. Back in the late 1980s the United States passed laws prohibiting the employment of illegal aliens. Under these laws, employers are required to verify that potential employees are authorized to work legally in the United States under the Form I-9 verification process (For more information on the I-9 verification process and to view the Form I-9, please visit www.longchangonline.com). Many employers, however, are unaware of this I-9 requirement and often do not verify their employees' work authorization. In recent years, the Department of Homeland Security has conducted raids at different worksites to catch illegal workers. Many of these raids have taken place at worksites where the U.S. government believes terrorists could target America (such as U.S. military bases, nuclear power plants, water treatment plants, etc.). President Bush wants to see greater enforcement of these existing laws relating to the hiring of illegal aliens. Again, the enforcement of existing laws is very important to many Republican legislators who do not want to pass new laws to benefit illegal aliens.

3. Guest Worker Program

In January 2004, President Bush first announced his "guest worker" program. In his speech in late November 2005, he again called for the passage of this "guest worker" program. President Bush described this program as follows: *"This program would create a legal way to match willing foreign workers with willing American employers to fill jobs that Americans will not do. Workers would be able to register for legal status for a fixed period of time, and then be required to go home. This program would help meet the demands of a growing economy, and it would allow honest workers to provide for their families while respecting the law".*

President Bush made very clear that this "guest worker" program is not an amnesty and will not automatically lead to citizenship. It is viewed as a way to become legal for a temporary period of time.

President Bush has advocated this "guest worker" program for almost 2 years now, but Congress has been unable to agree on an immigration plan which includes it. President Bush recognizes this and seems to have accepted the fact that, if this "guest worker" program has any chance of being made into law, it will most likely be

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part of a comprehensive immigration reform which includes strengthening the U.S. border and greater enforcement of existing immigration laws which prohibit illegal employment.

Summary

President Bush's plan for comprehensive immigration reform comes at a critical time. There are many immigration proposals being discussed in Congress right now. In the past month, the U.S. Senate has introduced several immigration proposals (many of which would have a positive impact on immigrants). While the Senate proposal is positive for immigrants, the U.S. House of Representatives has introduced enforcement-only legislation. Many of these proposals are expected to come up for a vote in Congress in early 2006. Stay tuned to www.longchangonline.com for updates on any new immigration laws.

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About Us

Long, Chang & Associates, L.L.P. is a full-service immigration law firm concentrating in the areas of employment-based and family-based immigration law. Our law firm has successfully represented individuals and employers through the immigration process with the Immigration and Naturalization Service (INS), Bureau of Citizenship and Immigration Services (BCIS), United States Citizenship and Immigration Service (USCIS) and at U.S. consulates and embassies in order to obtain both non-immigrant (temporary) visas and immigrant (permanent) visas on behalf of individuals or employees.

* * * * *



Kristen Aekyung Chang is a founding partner of Long, Chang & Associates, L.L.P. She practices exclusively in immigration law and is a member of the American Immigration Lawyers Association (AILA) and the North Carolina State Bar.

Born in Seoul, South Korea, Ms. Chang attended the University of North Carolina at Chapel Hill where she received a Bachelor of Arts degree in Psychology. While achieving academic success at the undergraduate level, Ms. Chang devoted much of her time to volunteerism. She served as the Chairperson on the Planning Committee for the University's Bicentennial Class celebration and served as a Research Assistant in the University's Psychology Department where she performed valuable research in the area of cognitive memory. Ms. Chang also volunteered in the school's International Department as an English language assistant for international students and faculty members and at a local psychiatric hospital. In addition to her numerous public-service efforts during her undergraduate career at the University of North Carolina at Chapel Hill, Ms. Chang studied abroad at the prestigious London School of Economics where she achieved the top academic ranking in International Business Strategy and Human Resource Management.

Ms. Chang received her J.D. (law) degree from the Wake Forest University School of Law. During law school, Ms. Chang was selected as a member of the Law School's Moot Court Board based on her performance in the school's trial court competition. She was one of three members on the school's nationally-recognized and award-winning National Moot Court Evidence Team. During law school, Ms. Chang studied Labor and Employment Law at the law school's summer program in Italy.

Following law school, Ms. Chang opened her own immigration law practice in Greensboro, North Carolina, and subsequently joined Mr. Long in founding Long, Chang & Associates. As a naturalized citizen of the United States, Ms. Chang understands the immigration practice not just as an immigration lawyer but as an immigrant herself who has gone through the immigration process. Based on her personal experiences, Ms. Chang has a remarkable way of relating with her clients and perceiving their anxieties and concerns.



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David J. Long founded Long, Chang & Associates, L.L.P. in 1998. He has been recognized by the North Carolina State Bar as a Board-Certified Specialist in Immigration Law. Mr. Long is a member of the American Immigration Lawyers Association (AILA) and the North Carolina State Bar. Mr. Long serves as a Mentor for other immigration attorneys through AILA.

Prior to founding Long, Chang & Associates, L.L.P., Mr. Long worked as an attorney with the law firm of Kilpatrick Stockton in Winston-Salem, North Carolina. Mr. Long practices in the areas of immigration law, corporate law and real estate.

Born in Philadelphia, Pennsylvania, Mr. Long attended the University of North Carolina at Chapel Hill where he studied in the Honors Program and received a Bachelor of Arts degree in Political Science. In addition, Mr. Long studied the Korean Language at Duke University for a semester while attending UNC-CH. Mr. Long graduated magna cum laude and in the top 1% of his class.

Mr. Long graduated with highest honors and received his J.D. (law) degree from the Wake Forest University School of Law. During law school, Mr. Long was selected as a member of the Law Review based on his academic standing. He was one of three members on the school's nationally-recognized Gabrielli Family Law Moot Court Team. Mr. Long also studied Labor and Employment Law at the law school's summer program in Italy.

Following law school, Mr. Long worked as an attorney in the commercial real estate department of Kilpatrick Stockton LLP in Winston-Salem, NC, one of largest law firms in the United States. After two years of working at a large law firm, Mr. Long desired the opportunity to assist clients on a more personal basis. As a result, he joined Ms. Chang in forming Long, Chang & Associates, L.L.P. Most recently, Mr. Long served as an adjunct faculty member at Handong International Law School in Pohang, South Korea where he taught U.S. Immigration and Naturalization Law.

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