

No Comprehensive Immigration Reform: a Year-End Review

Angelo A. Paparelli, Ted J. Chiappari and Olivia M. Sanson

New York Law Journal

2014-01-02 00:00:00.0

At this time last year, the Obama administration waxed rhapsodic about plans for comprehensive immigration reform in 2013,¹ leaving immigration practitioners cautiously optimistic that this would be the year.² Even though Obama's 2012 campaign pledge to produce immigration reform mimicked unfulfilled promises from the 2008 campaign,³ the GOP had been pummeled in the 2012 election over anti-immigration rhetoric;⁴ hence, there would be sufficient impetus on both sides of the aisle to pass bipartisan legislation.

But even longer term hope for a comprehensive package has waned at this point in response to stalemate discourse at the political level. Bickering over whether reform should be comprehensive or piecemeal has slowed congressional momentum and pushed immigration lower and lower on the list of priorities. Moreover, the distractions of the cataclysmic implementation of the Affordable Care Act, the failures of American fiscal strategy, and even tensions with Russia over its anti-gay propaganda law in anticipation of the 2014 Sochi Olympics have usurped the spotlight in the 24-hour news cycle.

Here then are the highlights of the progressively faltering push toward comprehensive immigration reform in 2013:


- On Feb. 12, 2013, President Barack Obama's State of the Union address expounded on the economic benefits of immigration and the new political consensus on the need for immigration reform, especially for the 11 million undocumented individuals in the United States. He also explained the necessity for a new "legal immigration system to cut waiting periods, reduce bureaucracy, and attract the highly skilled entrepreneurs and engineers who will help create jobs and grow our economy. In other words, we know what needs to be done. As we speak, bipartisan groups in both chambers are working diligently to draft a bill, and I applaud their efforts. Now let's get this done. Send me a comprehensive immigration reform bill in the next few months, and I will sign it right away."⁵
- On June 26, 2013, the House Judiciary Committee marked up the Legal Workforce Act (H.R. 1772), one of several piecemeal measures it had considered. This bill included provisions making the use of an electronic employment verification system mandatory.⁶
- On June 27, 2013, the Senate voted 68-32 in favor of final passage of S. 744, the "Border Security, Economic Opportunity, and Immigration Modernization Act," a comprehensive, bipartisan bill.⁷

- On July 10, 2013, the House of Representatives' Republican caucus met to discuss prospects for immigration reform. The leadership then released a statement rejecting the Senate's bipartisan bill.⁸
- On Oct. 2, 2013, House Democrats introduced a comprehensive reform bill based on the bill that passed in the Senate in June.⁹
- On Oct. 24, 2013, Obama called on the House to pass comprehensive legislation by the end of the year.¹⁰
- In an interview with National Public Radio on Dec. 20, 2013, Obama discussed the failure to meet his timeline for immigration reform. On his inability to get immigration reform passed, the president said: "The fact that it didn't hit the timeline that I'd prefer is frustrating, but it's not something I brood about."¹¹

Although the president obviously has other concerns that take up his time and energy, the failure to pass comprehensive immigration reform is something for us to brood about. Beyond the economic ramifications of limited work visas for qualified foreign professionals (e.g., the dearth of H-1B numbers), over which the business community is up-in-arms,¹² the human-level ramifications of the broken system status quo have been untenable.¹³ In the last decade plus, each year that has passed without systematic reform of our immigration system has seen widespread deportation of non-criminal foreign nationals, many of whom were long-time residents of the United States.¹⁴ Families have been torn apart time and again as individuals who pose no specific harm to the United States were sent packing.

On a positive note, in the past year there has been a major change in federal immigration policy, no thanks to Congress, that has substantively changed the prospects of individuals facing separation from family members and those who have made the United States their home without proper authorization. Specifically, since the Supreme Court overturned the Defense of Marriage Act, the U.S. Citizenship & Immigration Services and the U.S. Department of State began granting benefits to individuals on the basis of same-sex marriages.¹⁵ In addition, the executive's prosecutorial discretion initiative has refocused deportation and other enforcement efforts on individuals who have a record of criminal convictions or serious immigration violations (e.g., fraudulent applications).¹⁶ The Department of Homeland Security is regularly exercising its discretion not to pursue removal proceedings against individuals here without status where they have significant ties to the United States.¹⁷

Looking forward to 2014, the distractions of this year are likely to continue. Our fiscal strategy has yet to be resolved, the 2014 Olympics will likely continue to be controversial, and the implementation of the Affordable Care Act is perpetually divisive. We have no reason to expect that Congress will settle its disagreement over the suitability of a comprehensive reform package. There are other points of contention to consider as well, such as whether reform will include only legalization or create a path to eventual citizenship.

A decorative graphic on the left side of the page, consisting of overlapping blue and green geometric shapes.

Although comprehensive reform—the optimal outcome—is unlikely, even piecemeal reform may be beneficial. For example, given the strength of the Silicon Valley lobby, Congress may act to increase the number of professional work visas available to STEM (science, technology, engineering and mathematics) graduates.¹⁸ In addition, some sort of nod to pro-immigration Hispanic voters will likely become a GOP imperative if they want to maintain control of the House in the 2014 national elections.¹⁹ House Speaker John Boehner (R-Ohio) just this month hired an immigration policy consultant from a bipartisan think tank as "Assistant to the Speaker for Policy" on immigration issues, which seems like a step in the right direction.

Furthermore, the DREAMers (i.e., those brought to the United States as children and educated here) have fought such a hard and long battle for status in the United States, that sooner or later their objective will likely be achieved. This optimism persists notwithstanding the rift between Rep. Luis Gutierrez (D-Ill.), one of the stalwart supporters of immigration reform, and the National Immigrant Youth Alliance (NIYA) and their advocates at DREAMActivist.org. NIYA has staged several protests against U.S. border authorities, and illicitly recorded a conversation between Gutierrez and parents of a detainee, leaving him to wonder whether they were actually working toward the same end.²⁰

It also bears mentioning that the Supreme Court will soon decide whether INA §203(h)(3), a provision of the Child Status Protection Act which allows beneficiaries of certain visa petitions to retain earlier priority dates after "aging-out" (turning 21) and losing child status, applies to all derivative beneficiaries of immigrant petitions.²¹ A favorable decision would have an expansive impact on the class of individuals eligible to obtain lawful permanent residence as derivatives after reaching the age of 21.

Ultimately, however, only a cohesive, comprehensive package of reforms will bring about the kind of evolution that is economically and socially beneficial. The piecemeal approach is, after all, responsible for the problematic patchwork immigration laws we have now.

Angelo A. Paparelli is a partner in Seyfarth Shaw in New York and Los Angeles. **Ted J. Chiappari** is a partner and **Olivia M. Sanson** is an associate at Satterlee Stephens Burke & Burke in New York City.

Endnotes

¹ See, e.g., Stephen Dinan, "Obama says immigration reform will be priority," Washington Times (Dec. 30, 2012), accessible at <http://www.washingtontimes.com/news/2012/dec/30/obama-names-immigration-top-second-term-priority/>. (All web links are current as of Dec. 24, 2013.)

² For example, in a press release titled "AILA Calls on Congress to Embrace Principles Laid out by Bipartisan Group of Senators and Move Forward on Immigration Reform" issued on Jan. 28, 2013, AILA President Laura Lichter opined that a "Newly released bipartisan document shows consensus is not only possible but closer than ever." (Available at <http://www.aila.org/content/default.aspx?docid=43007>.)

³ See supra N.1.

⁴ See, e.g., *Cindy Y. Rodriguez*, "Latino vote key to Obama's reelection," CNN (Nov. 9, 2012), accessible at <http://edition.cnn.com/2012/11/09/politics/latino-vote-key-election/>.

⁵ The text of President Barack Obama's State of the Union Address on Jan. 12, 2013 is available at <http://www.whitehouse.gov/the-press-office/2013/02/12/president-barack-obamas-state-union-address>.

⁶ See Statement of Rep. John Conyers, Jr. for the Markup of H.R. 1772, the "Legal Workforce Act," by the Committee on the Judiciary, (June 26, 2013) accessible at <http://democrats.judiciary.house.gov/markup/markup-hr-1772-%E2%80%9Clegal-workforce-act%E2%80%9D>. The text of the Markup is available at [http://judiciary.house.gov/hearings/Markups 2013/mark_06262013/06 26 13 Markup Transcript.pdf](http://judiciary.house.gov/hearings/Markups%202013/mark_06262013/06%2026%2013%20Markup%20Transcript.pdf).

⁷ See Parker, Ashleigh and Martin, Jonathan, "Senate, 68 to 32, Passes Overhaul for Immigration," New York Times (June 27, 2013), accessible at http://www.nytimes.com/2013/06/28/us/politics/immigration-bill-clears-final-hurdle-to-senate-approval.html?_r=0, for a description of the bill.

⁸ See "Joint Statement by House GOP Leaders on Immigration Reform," (July 10, 2013), accessible at <http://www.speaker.gov/press-release/joint-statement-house-gop-leaders-immigration-reform>.

⁹ See David Nakamura, "House Democrats introduce separate immigration bill," Washington Post (Oct. 2, 2013), accessible at <http://www.washingtonpost.com/blogs/post-politics/wp/2013/10/02/house-democrats-introduce-separate-immigration-bill/>.

¹⁰ A transcript of Obama's Oct. 24 remarks on immigration reform is available at http://www.washingtonpost.com/politics/transcript-president-obamas-oct-24-remarks-on-immigration-reform/2013/10/24/7e322db4-3cba-11e3-a94f-b58017bfee6c_story.html.

¹¹ .See Scott Neuman, "Obama On Health Care Rollout: 'We Screwed It Up'," NPR (Dec. 20, 2013), accessible at <http://www.npr.org/blogs/thetwo-way/2013/12/20/255747861/live-updates-president-obamas-end-of-year-news-conference>.

¹² See, e.g., Jose Pagliery, "America's brain drain dilemma: immigrant students who leave," CNN Money (Feb. 1, 2013), accessible at <http://money.cnn.com/2013/01/31/smallbusiness/stem-immigrants/>.

¹³ See, e.g., Patrick Furlong, "Holes in the Fence: The Human Story Behind Immigration Reform," The Huffington Post (April 30, 2013), accessible at http://www.huffingtonpost.com/patrick-furlong/holes-in-the-fence-the-hu_b_3180918.html.

¹⁴ See, e.g., "ICE Total Removals through Aug. 25, 2012," covering FYs 2007-2012 with a breakdown of criminal versus noncriminal deportees, accessible at <http://www.ice.gov/doclib/about/offices/ero/pdf/ero-removals1.pdf>.

¹⁵ *United States v. Windsor*, 570 U.S.—, 133 S. Ct. 2675 (2013).

¹⁶ See, e.g., the TRAC Immigration Report on "Immigration Court Cases Closed Based on Prosecutorial Discretion" (updated as of November 2013), accessible at http://trac.syr.edu/immigration/prosdiscretion/activecourts_latest.html.

¹⁷ *Id.*

¹⁸ See *supra* N.12.

¹⁹ See, e.g., Cynthia Fagen, "Boehner Hires Immigration Adviser, Will Push Piecemeal Reform," (Dec. 3, 2013, accessible at <http://www.newsmax.com/Newsfront/John-Boehner-Rebecca-Tallent-immigration-hired/2013/12/03/id/539809>).

²⁰ See, e.g., Elizabeth Llorente, "Leading Pro-Immigrant Congressman Severs Ties With DREAMer Groups; Calls Them Manipulative, Racists," (Nov. 5, 2013), accessible at http://latino.foxnews.com/latino/politics/2013/11/05/rep-luis-gutierrez-cuts-ties-with-two-advocacy-groups-says-are-undermining/?utm_source=E-mail+Updates&utm_campaign=37a45e707c-CIS_Daily_Immigration_News_11_5_1311_5_2013&utm_medium=email&utm_term=0_7dc4c5d977-37a45e707c-44167573. See also Angelo Paparelli, "The Immigration-Abandonment Ploy—Fallout from a Fiddling Congress and Bickering Allies," (Nov. 11, 2013), accessible at <http://www.nationofimmigrants.com/uscis/the-immigration-abandonment-dilemma---fallout-from-a-fiddling-congress-and-bickering-allies/>.

²¹ See, e.g., The Supreme Court's Blog at <http://www.scotusblog.com/case-files/cases/mayorkas-v-cuellar-de-osorio/> and The American Immigration Counsel's Legal Action Center update at <http://www.legalactioncenter.org/supreme-court-update>.