

# CRS Report for Congress

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## Immigration Legislation Enacted in the 107<sup>th</sup> Congress

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### Summary

The 107<sup>th</sup> Congress enacted a variety of immigration-related laws. The Homeland Security Act (P.L. 107-296) reorganizes the federal government with the creation of a new Cabinet-level Department of Homeland Security. As part of this reorganization, it abolishes the Immigration and Naturalization Service (INS) and transfers INS's enforcement and service functions to separate bureaus within the new department. The USA PATRIOT Act (P.L. 107-56) and the Enhanced Border Security and Visa Entry Reform Act (P.L. 107-173) contain important provisions on border security, admissions policy, and foreign students. Among the other immigration-related laws enacted by the 107<sup>th</sup> Congress are measures that expand noncitizen eligibility for food stamps, extend special refugee provisions for former Soviet and Indochinese refugees, and create new nonimmigrant visa sub-categories for border commuter students.

This report provides brief summaries of 16 immigration-related laws enacted by the 107<sup>th</sup> Congress, organized by issue areas. However, it does not cover appropriations provisions. **Table 1** lists the laws in order of enactment.

### Reorganization of Immigration-Related Functions

The Homeland Security Act of 2002 (P.L. 107-296), enacted on November 25, 2002, reorganizes the federal government with the creation of a new Cabinet-level Department of Homeland Security (DHS). As part of this reorganization, it abolishes the Immigration and Naturalization Service (INS), an agency of the Department of Justice (DOJ), and transfers INS's service and enforcement functions to DHS. Within DHS, the Act establishes a Bureau of Border Security under a Directorate of Border and Transportation Security to handle INS's immigration enforcement function and establishes a Bureau of Citizenship and Immigration Services to handle INS's adjudication and service responsibilities. Under P.L. 107-296, the Department of State (DOS) retains its role in issuing visas, but the Secretary of DHS is given authority to issue regulations on visa policy. Other INS functions either remain at DOJ or are transferred to the Department of

Health and Human Services (HHS). (See CRS Report RL31560, *Homeland Security Proposals: Issues Regarding Transfer of Immigration Agencies and Functions*.)

## **Border Security and Admissions Policy**

Prior to the passage of the Homeland Security Act, the 107<sup>th</sup> Congress enacted two major laws affecting border security and admissions policy. The USA PATRIOT Act (P.L. 107-56) is a broad anti-terrorism measure that contains provisions to enhance security at the northern border. To this end, it authorizes appropriations to triple the number of INS border patrol personnel and INS inspectors there, among other provisions. With respect to admissions policy, the PATRIOT Act amends the inadmissibility section of the Immigration and Nationality Act (INA) to broaden somewhat the terrorism grounds for excluding aliens. It also seeks to improve the screening of visa applicants and applicants for admission. It amends the INA to direct the Attorney General and the Director of the Federal Bureau of Investigation to share data from domestic criminal record databases with DOS and INS to determine whether these applicants have criminal records. It further requires the Attorney General and the Secretary of State to develop and certify a technology standard that can be used to verify the identity of visa applicants and applicants for admission.

The Enhanced Border Security and Visa Entry Reform Act of 2002 (P.L. 107-173) likewise aims to improve border security and the visa issuance process. Among its provisions, it authorizes appropriations for additional INS inspectors, investigators, and support staff; personnel training; and technology and infrastructure improvements. It requires the development of an interoperable electronic data system to be used to share information relevant to alien admissibility and removability and the implementation of an integrated entry-exit data system. In addition, it places new requirements on the Visa Waiver Program, which allows nationals of certain countries to enter the United States as temporary visitors without visas. (See CRS Report RL31727, *Border Security: Immigration Issues in the 108<sup>th</sup> Congress*, CRS Report RL31512, *Visa Issuances: Policy, Issues, and Legislation*, CRS Report RL31381, *U.S. Immigration Policy on Temporary Admissions*, and CRS Report RS21205, *Immigration: Visa Waiver Program*.)

**Foreign Students.** Both the PATRIOT Act and P.L. 107-173 contain provisions to increase the monitoring of foreign students in the United States. The PATRIOT Act expands the foreign student tracking system and authorizes appropriations for the system. To close perceived loopholes in the admission of foreign students, P.L. 107-173 establishes electronic means to monitor and verify various aspects of the process, such as the registration and enrollment of nonimmigrants in the schools or exchange programs. (See CRS Report RL31146, *Foreign Students in the United States: Policies and Legislation*.)

## **Noncitizen Eligibility for Public Benefits**

P.L. 107-171, known as the “farm bill,” contains substantial changes to the food stamp eligibility rules for noncitizens. It expands eligibility to include: all legal permanent resident (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 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). (See CRS Report RL31114, *Noncitizen Eligibility for Major Federal Public Assistance Programs: Policies and Legislation*.)

## Refugees

The 107<sup>th</sup> Congress enacted several refugee-related measures. A general provision in the FY2002 Departments of Labor, HHS, and Education Appropriations Act (P.L. 107-116, §213) extended the “Lautenberg amendment” through FY2002. The Lautenberg amendment 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,” which made the adult children of certain Vietnamese refugees eligible for U.S. refugee resettlement. (See CRS Report RL31269, *Refugee Admissions and Resettlement Policy*.)

## Other Immigration-Related Legislation

**Border Commuter Students.** The Border Commuter Student Act of 2002 (P.L. 107-274) amends the INA to create new F and M student visa sub-categories to enable Mexican and Canadian commuter students to attend classes in the United States. These students are to be included in the foreign student monitoring system.

**Child-Related Legislation.** The Child Status Protection Act (P.L. 107-208) amends the INA to address the issue of children “aging out” of the definition of “child” while their petitions or applications are pending. (Under the INA, a “child” is an unmarried person under age 21.) P.L. 107-208 sets new rules for determining whether an alien is a child, where the alien is the unmarried son or daughter of a U.S. citizen, LPR, asylee, or refugee. Section 11030B of P.L. 107-273, the DOJ Authorization act, amends the INA to allow another citizen to apply for naturalization on behalf of a child born and residing outside the United States, whose citizen parent has died.

**Immigrant Sponsorship.** The Family Sponsor Immigration Act of 2002 (P.L. 107-150) amends INA affidavit of support provisions to address cases in which 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. P.L. 107-150 provides that in such cases, 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*.)

**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.*)

**Asylum Program for Certain Middle Eastern Nationals.** The Persian Gulf War POW/MIA Accountability Act of 2002 (P.L. 107-258) establishes a program to grant asylum to an Iraqi or other Middle Eastern national who delivers into U.S. custody a living American prisoner of war or person missing in action.

**Employment Eligibility Verification Pilot Programs.** A section of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) 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 program was to be in effect for 4 years. The first program to be implemented, known as the “basic pilot program,” expired in November 2001. The Basic Pilot Extension Act of 2001 (P.L. 107-128) amends IIRIRA to extend the life of each program from 4 years to 6 years.

**Waivers for Nonimmigrant Physicians.** Foreign physicians in the United States on J-1 visas must return to their home country after completing their education or training unless they are granted a waiver. P.L. 107-273 (§11018) amends the INA to increase the number of J-1 visa waivers that states can request (under the so-called “Conrad 20” program) from 20 to 30 per fiscal year until June 1, 2004. (See CRS Report RL31460, *Immigration: Foreign Physicians and the J-1 Visa Waiver Program.*)

**State Criminal Alien Assistance Program (SCAAP).** SCAAP provides financial assistance to state and local governments to help cover the direct costs associated with incarcerating unauthorized aliens. P.L. 107-273 (§11014) authorizes the appropriation of such sums as necessary for the program for FY2003 and FY2004.

**Immigrant Investors.** P.L. 107-273 (§11031-§11037) makes changes to the immigrant category for entrepreneurs who invest at least \$1 million in a U.S. business that creates at least 10 jobs (EB-5). These immigrants are initially granted LPR status on a conditional basis and must subsequently apply to have the condition removed, so they can become full-fledged LPRs. Several hundred EB-5 entrepreneurs in conditional status were unable to become full-fledged LPRs when the requirements for removing the conditional basis of their status were changed retroactively in 1998. P.L. 107-273 seeks to rollback these 1998 changes. It also amends the INA to eliminate the requirement that the EB-5 entrepreneurs establish a commercial enterprise.

**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.

**Irish Peace Process Program.** P.L. 107-234 extends through FY2006 a cultural exchange and training program that enables young adults from Ireland to work temporarily in the United States.

**DOJ Authorization Act Provisions.** In addition to the provisions on child-related naturalization, J-1 waivers, SCAAP, and immigrant investors discussed above, P.L. 107-273 makes other changes to immigration law. Section 11030 extends the deadline for applying for posthumous citizenship on behalf of individuals who die while on active-duty service during military hostilities. Section 11030A provides for an extension of H-1B status (beyond the INA’s 6-year limit) in cases in which 1 year or more has elapsed since the filing of an application or petition to accord an H-1B worker LPR status as an employment-based immigrant.

**Table 1. Immigration Legislation Enacted in the 107<sup>th</sup> Congress**

Public law	Provision
P.L. 107-45	Amends INA to make permanent the “S” nonimmigrant category.
P.L. 107-56	Authorizes appropriations to improve security at the northern border; amends INA to broaden the terrorism grounds for exclusion; authorizes interagency data sharing; requires the development and certification of a technology standard to verify the identity of applicants for visas and admission; expands foreign student tracking system.
P.L. 107-116	Extends “Lautenberg amendment” through FY2002.
P.L. 107-124	Amends INA to provide work authorization for nonimmigrant spouses of treaty traders and treaty investors.
P.L. 107-125	Amends INA to provide work authorization for nonimmigrant spouses of intracompany transferees.
P.L. 107-128	Extends pilot programs for employment eligibility verification for 2 additional years.
P.L. 107-150	Amends INA to allow for alternative sponsor to sign affidavit of support in certain cases if original sponsor dies.
P.L. 107-171	Expands food stamp eligibility to include all LPR children; LPRs receiving government disability payments; and all LPRs and other “qualified aliens” who have resided in the U.S. for at least 5 years.
P.L. 107-173	Authorizes appropriations for additional border-related personnel, personnel training, and technology and infrastructure improvements; requires development of interoperable electronic data system; requires implementation of entry-exit data system; places new requirements on Visa Waiver Program; establishes electronic means to monitor foreign student admissions process.
P.L. 107-185	Revises and re-enacts “McCain amendment” for FY2002 and FY2003.
P.L. 107-208	Amends INA to set new rules for determining whether alien beneficiary of a petition or application is a child.

Public law	Provision
<b>P.L. 107-234</b>	Extends Irish Peace Process Cultural and Training visa program through FY2006.
<b>P.L. 107-258</b>	Establishes asylum program for Middle Eastern nationals who deliver into U.S. custody a living American prisoner of war or person missing in action.
<b>P.L. 107-273</b>	Amends INA to allow citizen to apply for naturalization for child outside U.S. whose citizen parent has died; increases to 30 the annual number of J-1 waivers states can request for foreign physicians through June 1, 2004; authorizes appropriations for SCAAP for FY2003 and FY2004; makes changes to EB-5 immigrant category for alien entrepreneurs; extends deadline for applying for citizenship for individuals who die on active-duty service during military hostilities; provides for extension of H1-B status beyond current 6-year limit in certain cases.
<b>P.L. 107-274</b>	Amends INA to create new F and M student visa sub-categories for commuter students from Mexico and Canada.
<b>P.L. 107-296</b>	Abolishes INS and transfers its immigration enforcement and service functions to separate bureaus within a new Department of Homeland Security.

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