



Legalization Programs and the Integration of Unauthorized Immigrants: A Comparison of S. 744 and IRCA

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Executive Summary

Experiences under the Immigration Reform and Control Act of 1986 (IRCA) may prove to be a poor guide for understanding how smoothly today's unauthorized immigrants will integrate into the economy under reform proposals such as the Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744). While IRCA provided a relatively quick path to legal permanent resident status, S. 744 proposes a decade long process with much attendant uncertainty. This and other provisions in S. 744 may adversely affect immigrants' integration and economic mobility.

The legalization of undocumented immigrants is one of the most contentious issues in immigration reform discussions. One proposal emblematic of these discussions is contained in the Border Security, Economic Opportunity, and Immigration Modernization Act, passed by the Senate in June 2013 (S. 744). If this bill were to become law, unauthorized immigrants would be placed on a 10-year pathway to legalization with citizenship three years after that. In 1986, the Immigration Reform and Control Act (IRCA) provided a pathway to legalization and citizenship to unauthorized immigrants. IRCA was the first and most comprehensive legislation to address the issue of unauthorized immigration in the United States, with 2.7 million immigrants becoming legal residents under it (Kerwin 2010). Not surprisingly, IRCA is commonly used as a point of reference in current immigration reform discussions.

Research on the potential economic and fiscal effects of the legalization provision of S. 744 draws heavily from the 1986 IRCA experience, particularly concerning the expected earnings growth and occupational mobility of the would-be legalized. Earnings growth and upward occupational mobility mean larger benefits for immigrant families as well as larger benefits for the economy, larger tax revenues, and less reliance on government programs (Enchautegui et al. 2013; Institute of Taxation 2013; Lynch and Oakford 2013; Kossoudji and Cobb-Clark 2002). The IRCA experience can be used as a guide to the effects of the

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proposed legalization program and has been used in several estimates of economic effects of legalization (Enchautegui et al. 2013). But there are important differences between IRCA and current proposals that impinge on the economic mobility of the would-be legalized.

This brief seeks to discern what features in legalization proposals enhance or hinder the economic contribution and integration of unauthorized immigrants. Considering IRCA and the legalization proposal contained in S. 744 as emblematic of legalization programs, this brief examines differences between the two, specifically focusing on both the economic gains of legalization and the integration of immigrants. Other legalization proposals may emerge as immigration discussions continue. By comparing IRCA and S. 744, this brief aims to identify program features that could be used by policy makers and interest groups alike in crafting future legalization proposals for unauthorized immigrants.

The quick pathway to legal permanent residence in IRCA contrasts with the long and uncertain pathways proposed in S. 744. This brief contends that long and uncertain pathways to lawful permanent residence, renewals of temporary status, participation of employers in adjustments and certifications, and limits to occupational mobility—all of which are present in S. 744—are hurdles to the economic mobility and contributions of the prospective legalized population. This brief also argues that because immigration reform bills contain many elements that affect the integration of immigrants, such bills should be conceptualized as not only immigration policy changes but also integration policy interventions.

Certainly, times have changed and IRCA had its share of problems.¹ This brief contends not that a program resembling IRCA should be implemented currently, but that some of the provisions of S. 744 not present in IRCA could be improved to foster the economic integration of the would-be legalized and enhance the fiscal and economic effects of legalization. Looking back, IRCA's quick pathway to permanent residence was not only major immigration policy legislation but also a major immigrant integration policy. As S. 744 has not yet been passed by Congress and the nation continues to debate immigration reform, conceptualizing immigration reform bills not only as immigration policy changes but immigrant integration policies can help guide the design of legalization programs.

A Comparison of IRCA and S. 744 Pathways to Legal Permanent Residence and Citizenship

The main legalization features of IRCA and S. 744 are listed in tables 1, 2, and 3. The information on the table focuses on only the most important legalization stipulations and is not exhaustive. For example, it does not list provisions related to fees, absences from the United States, criminal record, and the filing of a complete application.

Table 1 shows IRCA's and S. 744's stipulations to qualify for temporary status. IRCA contained two major programs: one for general unauthorized immigrants and one for

¹ Some of commonly discussed problems included fraud in the Special Agricultural Program, the creation of mixed-status families through the absence of “derivatives” benefits, gender bias in documentation requirements and a lack of attention to future immigration flows (Cooper and O’Neal 2005; US Congress House Judiciary Committee 1999; Baker 1997; Hagan and Baker 1993).

agricultural workers.² In IRCA, general unauthorized immigrants who qualified were granted temporary status if they had arrived in United States before January 1, 1982. Under the Special Agricultural Worker (SAW) program, agricultural workers must have performed agricultural work for at least 90 days in the 12 month period ending on May 1, 1986 to qualify. Temporary status was not extended to spouses and children of petitioners. S. 744 also distinguishes between general and agricultural immigrants. General unauthorized immigrants requesting registered provisional immigrant (RPI) status must have arrived by December 31, 2011. The Blue Card program is for certain agricultural workers. To obtain a Blue Card, agricultural workers must have performed 575 hours or 100 days of agricultural work during the two-year period ending on December 31, 2012. Both programs extend temporary status to spouses and children residing in the United States by December 31, 2012.

Table 2 shows the legislations' stipulations during temporary status. Under IRCA, the temporary status could last up to 31 months for general applicants, or one to two years in the case of agricultural workers. During the first five years after temporary status was granted, the legalized could not receive means-tested federal benefits.³ There was no renewal of temporary status. In S. 744, temporary status could last up to 12 years for RPIs and up to 8 years for Blue Card immigrants. After 6 years, RPIs must renew their temporary status. To renew, RPIs need to have income levels no less than the poverty threshold and will have to show proof either of continuous employment without interruptions lasting more than 6 months or of ongoing education. Employers of Blue Card holders have to submit yearly reports to the Department of Agriculture about the employment of Blue Card immigrants during their temporary status. Neither RPIs nor Blue Card immigrants are eligible to receive means-tested federal benefits or subsidies for buying health care insurance in the exchanges in the Affordable Care Act.

Table 3 shows the legislations' stipulations to obtain lawful permanent resident (LPR) status and citizenship. After 19 months of temporary status, immigrants in the general IRCA program were eligible for lawful permanent residence. To obtain lawful permanent residence, temporary immigrants in the general program had to have minimal knowledge of English, US history, and government, or show that they were pursuing education or training in these areas. SAWs were able to obtain lawful permanent residence within one to two years after temporary status was granted. SAWs did not have to show proof of continued agricultural employment after enactment of the law to receive lawful permanent residence. IRCA had neither employment nor income requirements for it. After 5 years in LPR status, IRCA immigrants could become citizens.

In S. 744, the pathway to legalization and citizenship differs significantly from IRCA's model. Instead of being rapid and clear, it is long and uncertain. Under S. 744, the undocumented immigrant will be under RPI status for ten years before they can apply for lawful permanent residence. Border security and enforcement requirements have to be met (also referred as triggers), but processing of LPR applications must start within 10 years

2 Two other programs of smaller scale contained in IRCA were the "registry" granting legalization to immigrants who arrived to the United States by January 1972 (60,000 applicants) and for Cubans and Haitians who arrived before 1982 (Cooper and O'Neil 2005).

3 SAWs restrictions were specific to the program of Aid for Families with Dependent Children.

if these triggers are not met. After 10 years in RPI status, an application for adjustment to LPR can be submitted. However, it is uncertain when these LPR visas will be awarded because the visa applications of RPIs will be the last applications processed—they cannot be awarded until all visa petitions submitted before the enactment of the law have been awarded (this is the “back of the line” provision). To become LPRs, RPIs must show a record of regular employment and show that they are not likely to become a public charge. Agricultural workers with Blue Cards can obtain lawful permanent residence in five years. They must show employment in agriculture after enactment of the law. Specifically, a Blue Card holder could get LPR status in five years if during the five years since enactment of the law she or he worked no less than 150 work days in agriculture during each of three years.⁴ Blue Card holders’ visa applications are not subject to numerical limitations like those of RPIs. Under S. 744, after 3 years as an LPR, general immigrants can apply for citizenship. Former Blue Card holders can become citizens after 5 years as an LPR.

Hurdles to Economic Benefits and Integration of the Legalization Proposal of S. 744

Many studies draw from IRCA to infer the benefits of legalization for immigrants and the economy (Hinojosa-Ojeda 2010; Institute of Taxation and Economic Policy 2013; Lynch and Oakford 2013; Rector and Richwine 2013). However, S. 744’s long and bumpy pathway to LPR status for RPIs, the promise of a visa in five years with continued employment in agriculture, and the involvement of employers in the process of renewal and LPR application can be hurdles to the economic integration of the would-be legalized. There is a link between legal immigration status and the life chances of immigrants, and thus between immigration status and integration outcomes (Enchautegui 2008; Gleeson 2010; Jasso 2011; Massey 2007; Menjivar 2006).

In comparing IRCA legalization to the legalization proposal in S. 744, the following features could affect the economic contribution and integration of the newly legalized:

- **Long and uncertain period in temporary status is a constraint to integration:** Under IRCA, most newly legalized were legal permanent residents within two years. Under S. 744, the temporary status period for RPIs would be ten years, with renewal within six years. Blue Card holders would be in temporary status for five years. Admittedly, legal employment and freedom from the threat of deportation are important to undocumented workers and their families, offering an improvement over the current law. But temporary status is not the same as lawful permanent residence, and the implications for economic integration are important. The long period in temporary status, the renewal application after six years, and the uncertainty of when one would receive an LPR visa (because of “back of the line” provisions and border enforcement triggers) all hinder immigrants’ economic integration. Although the quantitative empirical research is scarce, there are qualitative studies of Central American temporary immigrants in the US, many of whom have been in temporary status for years, even decades. These studies find that temporary status is ambiguous; “it is neither an undocumented status nor a documented

⁴ Since the Blue Card is valid for up to eight years (table 2), the worker can get LPR status before 8 years if he/she shows that he/she worked 100 days in each of five years over the last 8 years.

one, but may have the characteristics of both” (Menjivar 2006, 1008). Menjivar (2006; 2012) and Mountz et al. (2002) describe at length the uncertainties and anxieties of these temporary status families, describing them as in a “legal limbo.” Temporary status has important effects on immigrants’ sense both of belonging and of their future in the United States. As Uriarte et. al. (2003, 11) posit in a study of immigrants with temporary protected status in the Boston area, “for persons other than U.S. permanent residents, immigration is a reality that must be managed on a daily basis.” Because of the uncertain future it offers, temporary status prevents immigrants from making investments both small and large (Mountz et al. 2012). Immigrants’ visions for themselves in the host country are important for investment in their own human capital and eventual earnings growth (Cortes 2004, Khan 1997), as well as other investments that depend on expectations of permanence in the United States (Galor and Stark 1991).

- **The bureaucracy of renewal:** Another important factor in legalization proposals is how administrative and bureaucratic processes affect the target population. S. 744’s provisions for the RPI status renewal process directly affect immigrants’ economic opportunities. According to Jasso (2011), immigration office personnel and practices—and those offices’ pervasive problem of lost documents—have significant effects on the life chances of immigrants. As a participant in Enchautegui and Menjivar (2013) states: “any little thing can cause a problem with the immigration [authorities]. Even a form for a change of address, if it’s not perfect, can throw off your case.” At times, immigrants hesitate to apply for temporary status renewal, because denial is a clear, official return to undocumented status, a result many immigrants fear (Uriarte et al 2003). These bureaucratic processes are not unbiased, privileging male immigrants, educated immigrants, and foreign-born spouses of natives (Hagan and Baker 1997; Jasso 2011; Salcido and Menjivar 2012). S. 744’s temporary status renewal process contains hurdles detrimental to the economic success of the would-be legalized, sending some back to an undocumented status, delaying renewal for others, and even taking some immigrants off of the legalization pathway completely.
- **Employers’ role in the pathway to legalization.** Proponents of legalization programs should also be wary of employers’ role in status certifications, renewals, and LPR status applications. Under S. 744, employers would play a direct role in the pathway to legalization of immigrants. RPIs have to renew their application in 6 years, conditional on employment and an income at or above the poverty line. Employment is verified again when applying for LPR status (see table 3). For Blue Card immigrants, employers have to provide a yearly employment status report to the US Department of Agriculture, simultaneously providing a copy to the worker. IRCA did not have similar employer involvement for temporary status immigrants. Employer verification for LPR status can also place workers in an uneasy relationship with their employers. It is known that workers in vulnerable conditions are less likely to come forward to report injuries and safety, wage or hours violations (Bernhardt et al. 2009; de Castro et al. 2006). And while unauthorized immigrants are at extreme vulnerability to these violations (Bernhardt et al. 2009; Enchautegui 2008), temporary status workers are also at high risk (Sukthakar 2012; US Government Accounting Office 2010). Allowing employers to play a role in legalization may come at the expense of improved wages and working conditions of the immigrants the program intends to benefit.

- **Family separation during temporary status:** Family reunification is a long-standing principle of US immigration policy and it encourages the social and economic integration of immigrants (Enchautegui 2013). Legalization programs that prevent family reunification can be detrimental for the well-being of immigrants. Under S. 744, temporary immigrants cannot petition visas for immediate family members residing abroad. This is yet another constraint to economic mobility and integration, especially considering the long duration of the temporary status. Most RPI immigrants will have to wait at least 10 years to petition for such visas. This was not the case in IRCA, because most immigrants in this program had received lawful permanent residence within two years of its enactment. Family members play a significant role in immigrants' integration; familial presence expands the availability of resources and enables economic mobility. These family members could contribute financially, assist in business, or support other family members' work (Baker and Benjamin 1997; Duleep and Regets 1996; Sanders and Nee 1996). The inability to bring family from abroad also takes an emotional and economic toll on immigrants, especially for mothers and fathers who send remittances to children and spouses abroad—often hindering their own economic well-being (Abrego 2009).
- **Locking immigrants into low paying jobs:** Legalization offers formerly undocumented immigrants the employment mobility to leave unfair or low-paying jobs (Kossoudji and Cobb-Clark 2002). Legalization proposals that constrain immigrants' job mobility can limit overall economic mobility. S. 744 promises permanent residence in five years to Blue Card agricultural workers who continue such work after enactment of the law, provided they work no less than 150 work days in agriculture during each of three years since enactment of the law.⁵ IRCA did not impose agricultural work requirements after enactment. It is crucial to note that agricultural jobs are among the lowest-paid jobs in the United States. For full-time agricultural workers in 2012, median weekly earnings were \$435, or 56 percent of the weekly earnings of the average worker.⁶ Poor wages, seasonal employment, and poor labor conditions push many agricultural workers to pursue other occupations and to increase the time spent on nonfarm work (Taylor and Thilmany 1993; US Department of Labor 2000; Walters et al. 2006). While the S. 744 agricultural work requirement is intended to produce a stable and authorized agricultural workforce, it may unintentionally slow economic integration of legalized immigrants by locking them at low wage levels.

What Does This Mean for Immigration Reform?

Immigration reform is one of the most debated policy issues in this country. Central to it is the question of what to do with over 11 million undocumented immigrants currently in the United States (Hofer, Rytina, and Baker 2012; Passel and Cohn 2012). Because IRCA is often used to analyze the economics of a possible legalization program, this brief

⁵ Since the Blue cards are good for up to eight years, the worker can get LPR status before 8 years if he/she show that worked 100 days each of five years in the last 8 years or 150 days of agricultural work each of three years during the last five years.

⁶ Data from Bureau of Labor Statistics, Household Data Annual Averages, Table 39: Median weekly earnings of full-time wage and salary workers by detailed occupation and sex, 2012. Retrieved from <http://www.bls.gov/cps/cpsaat39.pdf>

compares IRCA's legalization provisions with those in S. 744, which are emblematic of current discussions on immigration reform. The goal is to identify features of legalization programs that could enhance or hinder the integration of immigrants.

The legalization program in S. 744 is not only a major immigration policy change, but also a major integration policy intervention. Immigration status is central to the integration of immigrants. It affects legal rights, ability to sponsor family members, and access employment, financial capital, and government benefits (Enchautegui and Menjivar 2013). Using S. 744 as a guide and comparing it to IRCA, this brief points to features in legalization programs that are hurdles to the economic progress of legalized immigrants. IRCA, by allowing a quick pathway from undocumented to legal resident status, was not only a major immigration policy change but also a major integration policy intervention. Admittedly, S. 744 is better than the current law. However, because this bill is not yet law and additional proposals may emerge, there is still an opportunity to discuss a legalization proposal that would greater encourage the economic integration of the would-be legalized and increase their contribution to the economy.

A brief period of temporary status is critical for immigrants' economic integration. Long periods in temporary status with no certain outcome, as envisioned in S. 744, would slow the economic growth of the would-be legalized and thus dampen the economic benefits of legalization. Immigration reform proposals could shorten this period and curb the uncertainty introduced by renewals, "back of the line" stipulations, and border security triggers. Reducing the role of employers in immigrants' status certifications and adjustment could yield better jobs for immigrants. Fewer limitations on job mobility and faster family reunification also contribute to economic integration. Legalization proposals could also contain strong language enforcing regulation of wages, hours, and workplace safety.

There is a close link between immigration status and economic achievement (Jasso 2011; Massey 2007; Menjivar 2006). Stricter immigration laws such as increased border security measures, employment verification systems, improved tracking of nonimmigrants, and stronger interior enforcement, increase the visibility of immigration status, making it a stronger differentiator in economic achievement. The temporary statuses proposed as part of S. 744 could become another layer of economic disparity unless the changes suggested in this brief are considered.

Table 1. Selected Legalization Features of IRCA and S. 744: Receiving Temporary Status

IRCA ^a		S. 744 ^b
Date of arrival for temporary status eligibility		
General ^c	Entered US before 1/1/1982 (stat. 3394)	Arrived in the US by 12/31/2011 (138)
Agricultural workers ^d	Has resided in the US and performed agricultural work for at least 90 days in the 12 months period ending on 5/1/1986. (stat. 3417)	Performed 575 hours or 100 days of work during the two-year period ending 12/31/2012 (242)
Derivatives for temporary status	Temporary status not extended to spouse and children of the principal.	Temporary status extended to spouses and children of RPI and Blue Card holders in the United States by 12/31/2012 (144, 242)
Employment requirement to obtain temporary status		
General	No requirement	No requirement
Agricultural workers	Worked in agriculture for at least 90 days in the 12 months period ending on 5/1/1986 (stat. 3417)	Worked in agriculture 575 hours or 100 days during the two year-period ending 12/31/2012 (242)
Application period for temporary status		
General	During 12 months starting no later than 180 days after enactment of the law (stat. 3394)	Trigger: Not before the Secretary of Homeland Security has submitted to Congress the Notice of Commencement of implementation of the Comprehensive Southern Border Security Strategy and the Southern Border Fencing Strategy (13); applications accepted during 1 year from the publication of the law; extension of 18 months as determined by the Secretary of Homeland Security (147, 148)
Agricultural workers	During a period of 18 months beginning on the first day of the 7 month after enactment of the law (stat. 3417)	One year from publication of the law. Extendable another 18 months by the Secretary (242,243)

Notes:

^aReferences are to stat. number in Public Law 99-603- Nov. 6, 1986.

^bReferences are to page numbers in Border Security, Economic Opportunity and Modernization Act, S. 744, 113th Cong. (2013).

^cGeneral refers both to the general legalized population under IRCA and to registered provisional immigrants under S. 744.

^dAgricultural refers both to special agricultural workers under IRCA and to Blue Card holders under S. 744.

Table 2. Selected Legalization Features of IRCA and S. 744: Period in Temporary Status

IRCA ^a		S. 744 ^b
Duration of temporary status		
General ^c	Up to the 31st month after such status was granted (stat. 3396)	Up to 12 years from the date status was granted (164)
Agricultural workers ^d	1–2 years depending on the amount of agricultural work (stat. 3417;3418)	Blue Card: up to 8 years from publication of the law (252)
Renewal of temporary status		
General	No renewal	Renew after 6 years. The renewal is valid for another 6 years (164)
Agricultural workers	No renewal	No renewal, Blue Card permit valid for 8 years (252)
Employment and income conditions for renewal of temporary status	Not applicable (no renewal)	RPI: Renewal is conditional on employment, pursuing education, income level no less than 100% of the poverty level, not likely to be public charge (164–165) Blue Card: No renewal but employer has to submit every year a written record of employment to the alien and copy of such record to Department of Agriculture (262)
Eligibility for federal means-tested public benefits during temporary status	General: Not eligible for financial assistance furnished under Federal Law on the basis of financial need including Aid for Families with Dependent Children, Medicaid, or Food Stamps during the first 5 years since awarding temporary status (stat. 3401) SAWs: Not eligible for AFDC during the first five years since awarding temporary status (stat. 3422)	RPIs and Blue Card holders: Not eligible for means-tested federal government aid during temporary status and as determined in section 403 of PROWORA; not entitled to premium assistance tax credits (175, 260–261)

Notes:

^a References are to Public Law 99-603- Nov. 6, 1986.

^b References are to page numbers in the Border Security, Economic Opportunity and Modernization Act, S. 744, 113th Cong. (2013).

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^d Agricultural refers both to special agricultural workers under IRCA and to Blue Card holders under S. 744.

Table 3. Selected Legalization Features of IRCA and S. 744: LPR Status and Citizenship

IRCA ^a		S. 744 ^b
Eligibility for LPR		
General ^c	19 months after receiving temporary status (stat. 3395)	Uncertain. Trigger: Application can be submitted no less than ten years from the date RPI status was granted. LPR visa will be awarded after all visa applications submitted by the date of the passage of the law have been awarded (13, 190) Cannot use other mechanism to become LPR unless application was submitted before enactment of the law (193)
Agricultural worker ^d	For those who worked 90 days in agriculture during each one of the 12 month period that started on May 1, 1984, 1985, and 1986: First day after the end of a one-year period that started on the latter of when the temporary status was granted. For others: The day after the last day of a two-year period starting when the applicant was awarded temporary status (stat. 3417)	After five years (264). Not subject to numerical limitations (270) Cannot use other mechanism to become LPR unless application was submitted before enactment of the law (274)
Employment and income requirements to become LPR		
General	None	RPIs: Regularly employed; not likely to become a public charge, income at or above 125 percent of the federal poverty level (181)
Agricultural workers	No additional employment requirements other than those to qualify for temporary status (stat. 3419)	Blue Card: During the five-year period starting with the enactment of the law performed no less than 150 days of agricultural work during each of three years or in an 8 year-period performed 100 work days of agricultural work during each of 5 years (265)
English requirements for LPR status	General: Meet English language proficiency and knowledge of US history and government, or be pursuing these courses (stat. 3396)	RPI: Meet English language proficiency and knowledge of US history and government or be learning English (188)
Citizenship	After five years of LPR status	RPIs: After three years in LPR Status Blue Card Holders: After five years of LPR status

Notes:

^a References are to Public Law 99-603- Nov. 6, 1986.

^b References are to page numbers in the Border Security, Economic Opportunity and Modernization Act, S. 744, 113th Cong. (2013).

^c General refers both to the general legalized population under IRCA and to registered provisional immigrants under S. 744.

^d Agricultural refers both to special agricultural workers under IRCA and to Blue Card holders under S. 744.

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