

Can Immigration Reform Work?

A father of immigrants has a few practical questions.

by Lawrence B. Lindsey

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LIKE EVERYONE ELSE IN AMERICA, I am the biological product of a variety of waves of immigration to this continent, including some pretty early ones. Some of my ancestors were the first Europeans to cross the Hudson River from New Amsterdam and settle in the wilds of what is now New Jersey. But more relevant to today's immigration debate is that I am also the father of three immigrants to America who came here as infants or toddlers.

That naturally makes me a supporter of immigration. It also favorably disposes me to "comprehensive" immigration reform of the kind the president supports. The great majority of immigrants (legal and illegal) come here to work hard and make a better life for themselves. Moreover, the "send them home" alternative is highly impractical, even if most of its advocates are well meaning. But my firsthand experience with the immigration process for my children suggests that the pro-reform camp inside the Beltway has focused exclusively on getting legislation passed, and forgotten about the practical realities of implementing reform.

Government has never been known as an efficient agent of change. Twenty years ago we had an immigration reform that provided amnesty and was supposed to solve our immigration problem. But that last reform failed, as vividly demonstrated by millions of people in the streets waving the flags of their nations of origin, and scores of Minutemen sitting in lawn chairs on the border armed with radios to report illegals. And the costs of the failure to the social fabric are real. They include increased polarization over the immigration issue that will only deepen if nothing is done. Frankly, we can't afford another failure of government implementation. So, it is important to consider some practical realities that are now being ignored.

The front lines of immigration policy implementation are America's consulates in large cities around the world. Long before sunrise, queues form at these offices to apply for entry into America. The "entry window" to the office for an interview is often quite short, maybe two or three hours. If you're not in line early enough to get a number that allows you to have an interview that day, you're out of luck. The interview may well be one of several, even if you only want to go to America for a "visit."

If you wave an American passport (as I did), you get to go into a second, much shorter, line

and, usually, an indoor waiting room, away from the rain, heat, or cold. If you've done your homework, or someone has done it for you, you have a prearranged appointment, so the wait isn't too long. That is particularly helpful if, say, you're bouncing a one-year-old on your knee.

The consular officials are generally pleasant (at least to American citizens), but they are part of a process designed to be fairly tough in order to prevent people from entering America under false pretenses. For example, in the case of an adopted foreign orphan, it may be obvious that the baby can't answer questions, but the baby still has to be presented (along with tons of paperwork) to prove he or she is a real person. Our experience was relatively painless, in large part because we'd dotted the proverbial i's and crossed the proverbial t's before showing up. But, if your paperwork is not in order, it can take weeks or months, a long time if you're living in a foreign hotel room with an infant.

If you're not a citizen, the lines are longer, and the rules are tougher. The job of the consular officials is to make sure that those applying to visit don't stay, and that those applying to stay meet all of the requirements that Congress has passed. One Bulgarian couple we know wanted to visit their son who was going to school in America. After several visits to the consulate, the U.S. official decided to let the mother visit, but the father had to stay behind, in large part to ensure the mother's return to Bulgaria.

Those applying to come for good face a higher hurdle. At present, there are hundreds of thousands of people around the world who are waiting to immigrate legally to America. They have already waited in line to get their first appointment, then to submit the paperwork, then been called back to answer more questions. And still, they wait. In places like Hong Kong, the waiting time may be as long as 15 years. Most of these people have relatives--cousins or grandchildren, for example--who live and work and pay taxes in America and even have become American citizens.

While the process isn't pretty, there is no good alternative. Permission to reside in America is very valuable. Even permission to visit is, for many people, the opportunity of a lifetime. Unlike some nations--Canada, for example--we do not "sell" residency to people who promise to bring in investment money and create jobs. As economists would say, if you're not going to ration by price, you're going to ration by queue.

Comprehensive immigration reform promises that people already in the United States illegally can apply for citizenship, but requires them to "go to the back of the line." But a key question is, the back of which line? The reform bill before the Senate doesn't require illegal immigrants to go back home--to, say, Hong Kong, to the end of the 10-to-15-year line there--to get a green card. Instead, it allows the current illegals to receive their green card immediately--having, in effect, jumped the line at the U.S. consulate abroad. Then, like other green card holders, they will be able to work here, collect government benefits like food stamps and Medicaid, and travel as freely as if they had a U.S. passport.

The line the current illegals will go to the back of is the citizenship line. Under the proposed law, current illegals, newly minted green card in hand, will have to wait six years, then get in line to apply for citizenship. But even after six years, they will be years ahead of many people who have gone through the legal process and are waiting overseas for a

consular official to let them come here. Once those who have been playing by the rules all along get here, they too have to wait six years before getting in line for citizenship.

If we really mean "the back of the line," that should be behind everyone who is already in the pipeline to come here legally. If you are granted your green card under the new "guest worker" system, you shouldn't be able to apply for citizenship until after everyone already on queue has had their citizenship adjudicated. It's a simple matter of not rewarding people for line-jumping.

This is more than an appeal for elementary fairness. There is a very practical reason to prevent queue jumping: It helps consular officials keep order on the front lines of immigration policy. How can anyone enforce the rules for entry to America if line-jumping becomes the law of the land? Once the world knows that we make citizenship easier for those who break the rules, enforcing the rules becomes a nonstarter.

We supporters of immigration reform correctly deride the "ship them home" crowd for gross impracticality. But any kind of queue-jumping allowed by a new reform will create a law-enforcement nightmare for every American consulate on the planet. Worse, every person to whom we grant citizenship has uncles, aunts, grandparents, and cousins who can apply to settle here legally on grounds of family reunification. They, like others now waiting around the world, will have the choice of whether or not to play by the rules. This is our chance to establish the credibility of our rules, to make plain that in the future we will enforce them. If we don't, why bother having rules in the first place?

THE SECOND REALITY we supporters of reform are ignoring is the sheer immensity of the program we are proposing to implement inside our own borders. Anyone in the Washington, D.C., area can begin to get a feel for this by driving down Fairfax Drive near I-66 in Arlington, Virginia, past the local office of the Immigration and Naturalization Service, early on a weekday morning. Just as at all those U.S. consulates around the world, the line forms well before the doors open. If you show up at opening time, forget it. You won't be able to file your paperwork that day.

No one who's been through the naturalization process (as I have three times) will tell you that the INS is overstaffed, overfunded, or particularly user-friendly. Once, having checked the website on how to file a particular form, I took off early for N. Fairfax Drive to jump through the requisite hoops for one of my children. After several hours, I got my chance to hand the documents to the lady at the window. She looked them over and finally concluded, "I can't accept this, it has to be mailed."

I pointed out that the website had said it had to be hand-delivered, to which she responded that the rules had changed the week before. Maybe it was the look on my face, maybe the fact that I was obviously a taxpaying citizen who might actually know how to complain, but she eventually relented and made an exception. One suspects that such victories for common sense are rare, particularly for noncitizens. Serving the needs of noncitizens in a speedy manner is not a budgetary priority.

But there is a difference between bureaucratic slowness and rigidity and the complete breakdown of the process. In 2004 the INS issued 946,000 green cards and naturalized

537,000 people. The proposed immigration reform anticipates giving green cards to up to 11 million people in one fell swoop and making them eligible for citizenship six years later. It is inconceivable that the INS could handle an eleven-fold increase in its workload. Do we really intend to pass a bill that purports to document these 11 million people without setting up a system capable of providing them the promised documentation? If we don't, everyone else who is already here legally but needs a visa update, or has adopted a foreign-born child, or wants his aging mother to join him in America, will get swamped by the tsunami of newly legalized people seeking documentation.

Nor would this problem be easy to solve, even if Congress and the president were willing to budget for the flood of new work brought on by reform. Government bureaucrats require recruitment, background investigations by the Office of Personnel Management, training, and supervision by experienced personnel. Nearly four years after the creation of the Department of Homeland Security, the government is still sorting out organizational tangles, and that was a mere merger of agencies, not a massive expansion.

Then there is the issue of software--a term that covers a host of troubles. The proposed law contemplates that those issued "guest worker" status will be allowed to apply for citizenship if they perform the normal functions of citizens: paying their taxes, not breaking the law, and so on. Are we going to link the new "Earned Citizenship" program computer to the IRS computer to make sure taxes have been paid? How is the new program going to link with hundreds of state and local law enforcement authorities to discover which individuals have been law abiding?

There will be horror stories along the way, even if a serious effort is made to make the program work. Some violent criminal will not have made it into the INS data base, providing fodder for anti-immigrant talk radio. Some name confusion will cause an exemplary resident to be deported, leading to cries of racism by activist groups. With so many political factions benefiting from the perception of failure, the current lack of forethought about these problems is stunning.

This brings us to a third practical reality: the need to create a certificate of legal residency that is actually worth something. The last immigration reform, the Simpson-Mazzoli Act of 1986, theoretically requires that all employers check that the people they hire are here legally. Yet we have many millions of illegal workers, most of whom have arrived since that law was passed. Its gross ineffectiveness devalues the whole concept of playing by the rules.

To be credible, the new law must restore the value of the green card. The reform must make it harder to live in this country, receive its benefits, and get a job without a green card. That will require much tougher enforcement, both at the border and by employers. Once the country has a guest worker program that provides verifiable documentation to those who come here to work, why give driver's licenses or other benefits to individuals without documentation? Why not punish employers who hire undocumented workers? The whole idea of "comprehensive" immigration reform is to make the legal process credible again.

In theory, the "reform"-oriented Senate bill is supposed to be combined with an "enforcement"-oriented House bill in conference to produce "comprehensive" reform. But

substantial parts of the "reform" coalition have no interest at all in "enforcement." This includes many of the advocacy groups who staged the recent demonstrations and some of their political supporters. It probably also includes many employer groups, who have no interest in sanctions, and have embraced the guest worker approach only as a means of dampening demands for tougher enforcement.

This has not created an environment conducive to compromise, and cynical moves to score partisan points have made matters worse. Even so, passing legislation will prove to be the easy part. Successfully implementing a new law will be much tougher.

THREE THINGS MUST HAPPEN for comprehensive reform to work. First, "the back of the line" for citizenship must really mean the back of the line. No newly legalized illegal should obtain citizenship before anyone who has already begun the application process. Second, substantial money, manpower, and management skills must be committed as soon as possible to implementing the new immigration procedures. The government must be candid with the public about the enormous magnitude of the effort it is about to undertake. Otherwise, the inevitable missteps will undermine citizens' and would-be immigrants' confidence in our seriousness about the rule of law. Third, the government must make enforcement credible. This may mean physical barriers to entry; it certainly requires stepped-up enforcement at workplaces and by dispensers of government services. Logic would dictate that enforcement, particularly at the border, begin even before all of the administrative apparatus is in place. At the very least, government should act to minimize the size of the problem it faces.

America seems to embark on a major immigration reform roughly every 20 years. The one in the 1960s reoriented immigration toward the Western Hemisphere, while promising to control entry. The one in the 1980s offered amnesty and a path to normalization, and again promised to restore the rule of law. Neither delivered on enforcement. As Congress contemplates its third effort, the credibility of the entire process is very much at stake. This time, one suspects the proverbial "three strikes" metaphor applies: If Washington fails to provide a comprehensive system that actually engenders respect for the rules, the rule of law will be damaged to such an extent that it may not recover. The next time the issue comes to the fore, the politics will not be pretty.

Lawrence B. Lindsey is president and CEO of the Lindsey Group and former chief economic adviser to President Bush.

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