

MEMORANDUM

TO: NAPABA Board
FROM: Keaton Wong, Legal Intern, and Aleli Samson, Policy Director
DATE: June 19, 2007
RE: Comprehensive Immigration Reform and support for the Menendez-Obama-Feingold Amendment

PURPOSE

To request Board authorization to support the Menendez-Obama-Feingold Amendment (No.1317) to the compromise immigration bill or similar legislation, consistent with NAPABA's recent advocacy for Asian Pacific Americans (APAs) and support for amendments to protect family reunification. The Menendez-Obama-Feingold Amendment would increase the weight afforded to family ties under the proposed merit-based system by (1) eliminating the point threshold that must be met before family ties matter, and (2) awarding more points for family ties than currently proposed under the bill.

BACKGROUND

On June 4, the NAPABA Board voted to support the Menendez-Hagel Amendment to the compromise immigration bill, which proposed to extend the cutoff for legalization so that approximately 833,000 family members of U.S. citizens would not be left behind. On June 5, the NAPABA Board voted to support the Clinton-Mendendez-Hagel Amendment, which proposed to reclassify the spouses and minor children of legal permanent residents as "immediate relatives." Such a reclassification would have reduced their current five-year or longer wait to reunite with family members to approximately eight months.

Despite timely strategic calls to Senate offices by immigration rights advocates including NAPABA's staff, committees and affiliates, these family reunification amendments were defeated. (The Menendez-Hagel Amendment won 53 votes, constituting majority support, but due to a procedural tactic invoked by Sen. Kyl 60 votes were needed.) Such setbacks underscore the importance of advocacy for the family reunification amendments still pending. Voting on all remaining amendments, including the Menendez-Obama-Feingold Amendment, is expected to begin on Friday, June 22. Due to the manner in which voting will be conducted (i.e., a long marathon session on amendment after amendment...), there will be little to no time for advocacy once voting begins on Friday.

Although our country is undoubtedly in need of comprehensive immigration reform, some of the bill's provisions—namely, the proposed implementation of a new merit-based point system—significantly weaken the family-based underpinnings upon which the U.S. immigration system was founded. The bill would assign point values to family relationships depending on the nature of the family relation to a U.S. citizen. The bill would then prioritize admission of immigrants with specialized skills and education over entry of immigrants with parents, siblings and other family members in the U.S. Significantly, no points will be awarded to immigrants for family ties unless they have already earned at least 55 points through skills, education, an ability to speak English, and other merit-based criteria. Finally, immigrants who applied for visas on or

after May 1, 2005 and have lawfully waited patiently in line to be reunited with their families, will only receive two points.

The Menendez-Obama-Feingold Amendment would significantly increase the weight afforded to family ties by: (1) eliminating the arbitrary 55-point threshold for immigrants to earn family-based points; (2) awarding an equal 10 points for all family relationships without regard to the nature of those relationships; and (3) increasing the award of two points to five points for immigrants who applied for visas on or after May 1, 2005. Thus the Amendment would have the effect of increasing the maximum number of points that can be earned for family ties from 10 to 15.

ANALYSIS

The bill's proposed merit-based point system has the effect of favoring skilled and educated immigrants over those with family ties to the U.S. Supporters of the bill fear that unskilled and uneducated immigrants will burden society and the U.S. economy, whereas those with skills, education, and especially those with the ability to speak English are presumed to be more likely to make meaningful contributions. Yet, it is evident now that scores of immigrants who were unskilled, uneducated, and unable to speak English many generations ago have successfully assimilated to make vast contributions to the American economy. Without family reunification amendments such as the Menendez-Obama-Feingold Amendment, the bill and its proposed merit-based point system would separate families, divide generations, and cut-off the growth within the immigrant community that comes with each generation of immigrant families that stay together in the U.S. America has never before closed its doors on families in the name of social engineering, but it threatens to do so now.

The bill's adverse effect on the family foundation of the U.S. immigration system is of particular concern to the APA community. In 2005, seven of the top 10 countries to receive family preference immigration visas from the U.S. State Department were Asian countries. Of the 146,279 family visas that were issued that year, more than half were issued to immigrants from Asian countries.

Furthermore, the bill's merit-based point system and the arbitrary 55-point threshold disproportionately affect immigrant women, who use family-based immigration more so than adult men. In fact, less than 4% of women enter the U.S. based on their employment. The bill awards more points to those with skills and employment, especially in occupations traditionally dominated by men. Outside the U.S., including many Asian nations and the Pacific Islands, women simply do not have the same opportunity as men to access education, and eventually, employment in specialized fields. As a result, sons and brothers are unfairly more likely than daughters and sisters to succeed in using family-based immigration to enter the country legally.

Critics of the Menendez-Obama-Feingold Amendment argue that it is appropriate to grant more weight to merit-based criteria such as skills and education than to family ties. According to them, doing so maintains a viable U.S. economy. However, the Menendez-Obama-Feingold Amendment would not dismantle the bill's merit-based components. It merely protects *basic* principles of family reunification by (1) eliminating the arbitrary 55-point threshold that

must be met before family ties matter, (2) awarding an even instead of variable point value for family ties, and (3) awarding five points instead of two for law-abiding family members who applied for legalization after the bill's proposed cut-off date.

Critics might also argue that the proposed bill is a product of a "Grand Compromise" that maintains a delicate balance between the interests of Democrats and Republicans, a balance that could be overburdened by too many amendments, thereby sacrificing the positive strides otherwise made by the bill. However, all of the pending amendments are a product of a more recent compromise: Senate Democrats and Republicans mutually agreed to a limited number of amendments on each side that would receive a vote—all in the name of passing a comprehensive immigration reform bill in the Senate. In this way, the compromise bill seems less precariously balanced and less vulnerable to being overburdened by amendments.

RECOMMENDATION

As an organization dedicated to promoting justice, equity, and opportunity to the Asian Pacific American community, NAPABA has been engaged and involved with immigrant rights for years. Consistent with such involvement and based on the foregoing, NAPABA is in an ideal position to support the Menendez-Obama-Feingold Amendment and set action by NAPABA committees, affiliates, and the Coalition of Bar Associations of Color (CBAC) in motion. Hence, it is the staff's recommendation that the Board adopt a position in support of the Menendez-Obama-Feingold Amendment, or other similar legislation.