

Top Talent Could Lose Fast Track to U.S.; Under Bill, Foreign Luminaries Would No Longer Skip Immigration Line

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Body

Would America open its doors for the next Albert Einstein? Under the new immigration bill, the answer is maybe, but maybe not.

For years, foreign-born Nobel Prize winners, corporate officers, and top talents in sports, arts and sciences have had a fast track to permanent residency, and eventually citizenship, in the United States. In the name of attracting the world's greatest and brightest, authorities have granted these luminaries priority access to green cards under a little-known provision offered to "aliens of extraordinary abilities."

It has provided a way for a host of notable foreigners -- among them John Lennon and Yoko Ono and Venezuelan-born New York Yankee Bobby Abreu -- to make America their home.

But the bill now being debated in Congress would do away with the special "EB-1" preferred-status category, effectively forcing foreign VIPs to take a number and get in line with everyone else. They would be subject to a complex point system to determine their eligibility -- assessing education levels, English abilities, experience in the United States and other factors -- just as any engineer from India or farmworker from Mexico.

Although the bill has come under fire from some who call it elitist -- it would tip the scales toward better-educated immigrants with good English -- the elimination of the EB-1 category would effectively mean that the most elite foreigners seeking to build lives in the United States would face new hurdles.

"It was almost like having a gold card or an entrance to a private club, but under this new bill, you won't have that anymore," said Muzaffar Chishti, an immigration specialist at New York University. "If they want to come here on a permanent basis, they will certainly be in a more disadvantaged position than they were in the past."

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Leading critics of the bill say it is fraught with problems for top universities, Fortune 500 companies, sports recruiters and cultural institutions seeking to lure global leaders in their fields to work in the United States. Though many such candidates would rise to the top of the point system based on their academic backgrounds and language skills, experts say permanent residency would by no means be assured. They note that even Nobel Prize winners occasionally have weak English skills, while highly skilled athletes and musicians often bypass traditional schooling and do not possess high school diplomas or university degrees.

Consider this: If Bill Gates -- who dropped out of Harvard -- were foreign-born and subject to the new point system, would Microsoft be able to hire him to live and work in the United States?

"There is no importance being placed on the intangible talents of a Chinese pianist or a Latin American baseball star," said immigration lawyer Jonathan Ginsburg, who represents leading foreign-born musicians. "My overall impression is that the Senate proposes to deemphasize ability -- extraordinary ability -- in favor of paper qualification and a narrow range of experience."

Last year, 36,960 individuals and family members were granted "priority" permanent resident status under the "extraordinary abilities" category. Under the 100-point system established by the bill, "extraordinary or ordinary" ability in a specialized field would offer, at most, eight additional points to a candidate. That is less than the 10 points that would be awarded to applicants holding a two-year college degree.

"Every effort has been made to create a balanced system," said a Senate Republican leadership aide who demanded anonymity, citing the sensitivity of the issue. "The aim is to focus efforts on attracting those immigrants who have the combination of skills, education and English-language proficiency that will make them productive Americans."

But the prospect puts some rarefied institutions on edge.

Penny Rosser, director of the international scholars office at the Massachusetts Institute of Technology, said MIT processes as many as 20 EB-1 applications each year for leading foreign-born scholars. She would not discuss the immigration status of individual Nobel Prize winners and other luminaries at MIT, but doing away with the "fast track" system for such scholars, she said, could exacerbate green-card delays that already run up to almost three years for some applicants.

Worse, she said, the new system would greatly reduce the weight of intangible talents and scholars' fame in their fields when their applications are considered.

Critics also say U.S. companies could be at risk of losing top foreign-born talent to overseas competitors. Elizabeth E. Stern, an immigration lawyer at Baker & McKenzie in Washington, said one of her clients is in the process of getting EB-1 status to head one of seven divisions of a major electronics manufacturer in Silicon Valley. Like several top executives in his field, she said, the client -- whom she would not name -- does not have advanced degrees.

"This guy is one of a half-dozen people in this world who is up to the job of heading a division of a multibillion-dollar behemoth. Now you're going to say that because he has no degree he doesn't have enough points to stay?" Stern said. "These are exceptional people, and by not treating them as such this country stands to lose."

In the balance, observers say, are people such as Jasvinder Singh, 42, an interventional cardiologist from Fiji who got a green card this year after receiving "extraordinary ability" status in 2006. While in the United States on a series of temporary visas, he pioneered a treatment for inserting a specific kind of tubing into arteries to treat heart blockages.

"You have people who have new ideas, who are involved in teaching local people to advance medical care," Singh said. "Extraordinary ability status helps not only them, but also their students, their patients and medicine at large."

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And those are the people you cannot lump together with people applying for family reasons or economic reasons just to get into this country."

Professional sports organizations, agents and players groups are still assessing the bill's potential impact, but the short-term effects would probably vary across fields and skill levels. Most foreign-born professional baseball players, for instance, come to the United States on temporary "team" visas that anticipate their ultimate return to their home nations. But some -- including the Yankees right fielder, Abreu, according to his agent -- have used EB-1 status to gain permanent residency. That avenue would become far tougher for many sports stars who do not have advanced degrees and excellent English skills.

Barry Frank, a top official at IMG, which represents sports, fashion and entertainment personalities, said: "Look, baseball is basically becoming a Hispanic game. And don't forget who their employers are -- men of considerable means and power. The owners are not going to let their stars get away because of some silly Washington law. I think you're going to hear some noise."

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