Will the DREAM of US immigration reform become reality in 2014?

Optimism is growing, reports Peter Mares in New York, but getting the legislation through Congress will only be the first of the challenges

VIVIENNE McLean is torn. “I go to every march, I come to every meeting, I sign every petition,” the silver-haired activist tells me, laying out her credentials as an advocate on behalf of the estimated 11.7 million undocumented migrants in the United States. “But I am also a human being. I have to respond to my feelings about what is happening to my sister.”

We are sitting together at a seminar organised by the New York Immigration Coalition and she has just asked an uncomfortable question. The seminar is launching a new report, Preparing for Legalization, which anticipates the day when comprehensive immigration reform will enable millions of undocumented migrants to regularise their status in this country. That day is not too far off, according to the seminar speakers, who anticipate that an alignment of political forces will allow the legislation through Congress this year. While Jamaican-born McLean welcomes that prospect, she fears that the monumental administrative task will push out waiting times for people who have applied to migrate to the United States through formal channels.

“In June 2007 I applied for my sister to join me under the Category 4 program,” she explains. Category 4 enables adult US citizens to sponsor the migration of a brother or sister. “She has waited six years and still has another minimum six years to go.”

Like many other formal migration programs, Category 4 is subject to massive delays – US Citizenship and Immigration Services has a backlog of 4.4 million visa applications – and country-based quotas. Waiting times for Filipinos and Mexicans exceed those for Jamaicans, for example, extending out beyond twenty years. McLean wants an assurance that if Congress passes comprehensive migration reform it will also increase processing capacity massively so that applicants already in the system, like her sister, will not be forced to wait even longer. It is an assurance no one can give, not least because the shape of migration reform remains unclear.

So far, the main legislative action has been in the Senate, where reformers managed to assemble majority support for the Border Security, Economic Opportunity, and Immigration Modernization Bill. More commonly referred to as S 744, the bill was drafted by a bipartisan group of senators, known as the “Gang of Eight,” that includes Arizona senator John McCain, the Republican candidate in the 2008 presidential election. In an effort to meet different goals and satisfy divergent interests, it links a process for regularising the status of millions of undocumented migrants – essentially a mass amnesty – to a comprehensive overhaul of the formal immigration program and a substantial beefing up of border security.

If it were to become law, S 744 would enable undocumented migrants to apply immediately for the newly created status of a Registered Provisional Immigrant, which would grant them formal work rights and protect them from deportation. A new set of border enforcement measures would be needed before these provisional immigrants
could become permanent residents or citizens, however. According to a summary prepared by the Library of Congress, these include the construction of “no fewer than 700 miles of pedestrian fencing” and a doubling of staff numbers to ensure that there are “at least 38,405 trained full-time active duty US Border Patrol agents” along the border with Mexico. S 744 also seeks to address the concerns of people like Vivienne McLean, proposing measures intended to clear the backlog of visa applications within the space of seven years.

Of course a Senate bill has no effect unless it is also passed by the House of Representatives, where progress has been slower. In October, Democrats proposed a complementary immigration reform bill called HR 15, which replicates most of the measures in S 744 while taking a less militarised approach to border security. Rather than mandate certain levels of infrastructure and staffing, or require the use of specific surveillance technologies (like aerial drones), HR 15 focuses on creating targets and accountability mechanisms to ensure improved border control. The bill has yet to move beyond the committee stage. Even if it’s passed by the House, it will need to be reconciled with the Senate bill – a potentially tortuous process – before comprehensive immigration reform can become law.

Despite the hurdles – and political disappointments stretching back more than a decade – advocates of immigration reform are cautiously optimistic about progress in 2014. After addressing the seminar in New York, Steven Choi, executive director of the New York Immigration Coalition, told me that his optimism is based on the fact that “everybody now recognises that this is an issue that has to be dealt with.”

Another speaker at the seminar, Katherine Fennelly, a senior fellow at the Immigration Policy Center in Washington, concurs. She believes that Republicans have a strong incentive to support immigration reform ahead of the November 2014 mid-term Congressional elections. “Most opposition to comprehensive immigration reform has come from Republicans, but more than 70 per cent of immigrants voted for Obama in the last election.” All 435 seats in the House of Representatives will be up for grabs, along with thirty of the 100 seats in the Senate, and many state legislatures and governorships.

It has become a political truism to say that Republicans can no longer rely on the “white vote” to win US elections, and the country’s demographic trajectory suggests that this trend will intensify. Hispanics and Asian-Americans make up 10.8 and 3.8 per cent of enrolled voters, respectively; both groups are growing, and both overwhelmingly support immigration reform. As a result, says Fennelly, conservatives are under great pressure to compromise. “The Republican National Committee has put the writing on the wall. It has said that there has to be comprehensive immigration reform that includes some kind of legalisation in order to not have Republicans lose all of the future presidential elections.”

There are also strong economic arguments in favour of immigration reform. In a report for the Immigration Policy Centre, Raúl Hinojosa-Ojeda estimated that the higher earning power of newly legalised workers would translate into an overall increase in personal income of between $30 and $36 billion in the first three years. This would generate up to $5.4 billion in extra tax revenue and create hundreds of thousands of jobs through increased consumer spending. Hinojosa-Ojeda also concluded that legalisation would increase productivity and growth by encouraging migrants to invest more in their own education and training, in starting businesses and in buying homes.

If efforts to get legislation through the current Congress fail then attention will shift to the White House. Steven Choi says that Barack Obama will come under “tremendous pressure” to use his administrative powers to carry out a “mass legalisation program” before his term expires in 2016. But this is a second-best option, according to Choi. “The president cannot provide a path to citizenship. But what he can do is stop people from being deported, and this is something we have asked for. Provide a path to legalisation, protection from deportation, work authorisation – these are some things he can do.”

PRESIDENT Obama has used his administrative powers in this way once before. In mid 2012, he introduced Deferred Action for Childhood Arrivals, a program that suspended enforcement action against undocumented migrants who entered the United States as children. As a Brookings Institution report points out, the scheme doesn’t grant “permanent lawful status” to successful applicants, but it does grant employment authorisation, enabling them to live and work on a renewable two-year permit without fear of arrest or deportation.
The deferred action program is a temporary response to the repeated failure of attempts to push another significant immigration bill, the DREAM Act, through Congress. DREAM stands for “Development, Relief and Education for Alien Minors,” and the term DREAMers has become shorthand for undocumented migrants (often referred to here as “illegal aliens”) who arrived in the United States before they turned sixteen. The Migration Policy Institute estimates that around 1.9 million DREAMers under the age of thirty-one are living in the United States.

The push for a more generous response to DREAMers than to their adult counterparts has various motivations. Having arrived as children, they are not held fully responsible for their actions in crossing the border without authorisation, and shouldn’t be denied life-changing opportunities like the chance to learn a trade, get a college education or obtain a driver’s licence. And, having grown up in the USA, the DREAMers are in many ways already Americans, so it makes sense to enable them to become more productive and engaged members of society rather than force them to live in the shadows. Recruitment into the armed forces could also be increased by offering a short cut to citizenship via military service.

Since only Congress can provide a path to citizenship, President Obama’s deferred action program falls far short of a DREAM Act. It is also hedged about with qualifications. Applicants must be between the ages of fifteen and thirty-one, must have entered the United States before June 2007 and before reaching the age of sixteen, and must have lived continuously in the country for at least five years. They must also be in or have graduated from high school (or passed the General Educational Development skills test) or have served in the military. They must be free of convictions for any felony or any “significant” misdemeanour, or for three or more “other” misdemeanours, and must not otherwise pose a threat to public safety or national security.

Even within these parameters, it’s estimated that more than a million DREAMers meet the age and educational requirements for deferred action. By the end of September 2013, after the scheme had been in operation for a little over a year, close to 600,000 applications for deferred action had been lodged and more than 450,000 granted. (Around 10,000 applications, or about 2 per cent, were rejected, with the remainder awaiting a final decision.)

According to the Migration Policy Institute, more than 400,000 DREAMers won’t meet the educational criteria for the scheme. Media reports also tell stories of young migrants who struggle to produce the necessary documents, can’t afford the application fees, or are rendered ineligible because of a youthful tangle with the law.

Because advocacy groups are best able to reach Spanish speaking migrant populations, the majority of applicants for deferred action have been Latinos. In New York, despite extensive efforts by advocacy groups, only about one in three of those eligible for deferred action have so far lodged an application. Application rates have been far higher in cities like Los Angeles – partly, according to Katherine Fennelly, because New York has the most ethnically and linguistically diverse population in the United States. The 900,000 undocumented migrants living here are thought to come from 150 different countries; a large segment of LA’s undocumented population, by contrast, is from Mexico.

Nevertheless, deferred action has been “nothing less than life changing” for hundreds of thousands of young people, says Steven Choi. What President Obama did for young adult immigrants, Choi says, he can also do “for everybody else.” Regardless of whether regularisation comes via Congress or through an administrative act by the president, he says, “it will open up completely new worlds” for the beneficiaries. But the complexities of implementing the relatively small deferred action program suggest that it will prove a massive challenge.

THE last comprehensive program of immigration reform was implemented nearly three decades ago during Ronald Reagan’s presidency. The 1986 Immigration Reform and Control Act, the largest legalisation program in US history, regularised the status of three million undocumented immigrants. Since then, smaller programs have benefited refugees from Haiti and Central America. Common to these programs has been a huge investment of effort and resources by government and non-government organisations.

“In some ways, the best case scenario for us as advocates is almost the worst case scenario for us as coordinators of legal services,” says Choi, pointing out that a massive public information campaign will be required, alongside huge demand for legal advice and assistance in filing applications.
“I think that we are going to say, this is unbelievable, we’ve got immigration reform,” he says. “Then it’s going to be, oh my God, how are we going to deal with legalisation? So it will be both a tremendous accomplishment but also a tremendous challenge as well.”

And what happens to the millions of people – perhaps a third of the undocumented population – who are not eligible for legalisation because they have criminal records or fail to meet baseline educational requirements? “It’s going to be a very difficult thing,” says Choi. Many people are going to say “that’s it for immigration reform,” he believes, and so “it’s going to be a huge challenge to decide how we are we going to provide services and continue advocate for those folks.”

Another question also arises. Even if comprehensive immigration reform is successful, what happens in a decade or two? Won’t there be another build-up of millions of undocumented migrants, requiring another mass legalisation program? The Immigration Reform and Control Act was implemented in 1986, yet in the decades since 1990, despite (or perhaps because of) a massive investment in border control, the size of the undocumented population in the United States has tripled.

“Immigration is a changing phenomenon,” Katherine Fennelly says when I raise this issue with her. “There will always be a need to look at current policies and see how they can be improved in the future.” Just like Vivienne McLean’s concern about what immigration reform might mean for her sister, it seems to be a question for which there is no entirely satisfactory answer. •

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This article was updated on 5 January 2014 with additional detail about S 744.