

Date of Hearing: April 18, 2017

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 343 (McCarty) – As Amended April 5, 2017

**SUBJECT:** Public postsecondary education: holders of certain special immigrant visas

**SUMMARY:** Extends eligibility for California residence classification, for tuition/fee purposes only, to persons having certain special immigrant visas (SIVs) or having refugee status.

Specifically, **this bill:**

- 1) Fines and declares that between 2011 and March 2017:
  - a) More than 36,000 refugees entered California, including 8,000 in 2016.
  - b) More than 37,000 individuals were granted SIVs, and 9,200 SIV holders have resettled in California.
- 2) Provides residence classification—thus waiving the one-year residency requirement to qualify for in-state tuition at the California State University (CSU) and California Community College (CCC)—for students who are either refugees or Iraqi or Afghan SIVs who worked for or on behalf of the U.S. Government, and their dependents.
- 3) Requests that the Regents of the University of California (UC) adopt policies consistent with (1).

**EXISTING LAW:**

Federal law:

- 1) Provides eligibility for SIVs to certain Iraqi and Afghan nationals who worked directly with the U.S. Armed Forces, as interpreters, translators, or otherwise. Upon admission to the U.S., holders of SIVs are granted lawful permanent resident (LPR) status under the Immigration and Nationality Act (INA).
- 2) The INA, as amended by the Refugee Act of 1980, also authorizes the admission and resettlement of refugees, which comprise a category of humanitarian admissions and are persons unwilling or unable to return to their home countries “because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.” After one year of refugee status in the U.S., refugees are required to apply to adjust to LPR status.
- 3) Requires institutions of higher education, under the Veterans Access, Choice, and Accountability Act of 2014 and in order to remain approved for federal GI Bill programs, to charge in-state tuition and fees to qualifying veterans and their dependents, termed “covered individuals”. Generally, a covered individual is someone who lives in the state where the institution is located, regardless of their formal state of residence, and enrolls in the school within three years of discharge from active duty service of 90 days or more.

State law:

- 1) Makes the following definitions:
  - a) "Resident" is a student who has residence in California for more than one year immediately preceding the residence determination date. (Education Code (EC) Section 68017.)
  - b) "Resident classification" means classification as a resident at UC, CSU, or the CCC. (EC Sect. 68022.)
  - c) "Residence determination date" is a date established by the university or community college district governing boards for each semester or quarter to determine a student's residence. (EC Sect. 68023.)
- 2) Requires each student to be classified as a resident or nonresident. (EC Sect. 68040.)
- 3) Requires the segment governing boards to adopt regulations for determining a student's residence classification, which are to include provisions requiring the financial independence of a student classified as a nonresident and seeking reclassification as a resident as a factor to be considered in the determination of residency, and establishes financial independence criteria. (EC Sect. 68044.)
- 4) Requires a student classified as a nonresident to pay nonresident tuition in addition to other tuition and fees required by the institution. (EC Sect. 68050.)
- 5) Exempts an Armed Forces member—stationed in the state on active duty for more than one year immediately prior to being discharged—from nonresident tuition at CSU and the CCC for the length of time he or she lives in the state after being discharged up to the minimum time necessary to become a resident. (EC Sect. 68075.5(a).)
- 6) Exempts specified California nonresidents from paying nonresident tuition at UC, CSU, and CCC, also known as the AB 540 nonresident tuition waiver, if they meet all of the following: (EC Sect. 68130.5.)
  - a) Attended a California high school for three or more years;
  - b) Graduated from a California high school or attained an equivalent degree;
  - c) Registered or attended an accredited California higher education institution beginning after fall of the 2001-02 academic year; and,
  - d) If an alien without lawful immigration status, has filed an affidavit stating that the student has filed an application to legalize his or her immigration status or will file such an application as soon as he or she is eligible to so do.
- 4) Exempts students who are victims of trafficking, domestic violence, and other serious crimes who have been granted a "T" or "U" visa under specified federal law from paying nonresident tuition to the same extent as refugees. (EC Sect. 68122.)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

*Purpose.* This bill, for purposes of determining tuition/fee charges at UC, CSU, and the CCC, provides SIVs and refugees with resident classification, meaning that they would be eligible to pay resident tuition/fees and not be subject to additional nonresident tuition/fee charges. Under normal circumstances, someone has to reside in California for one year before becoming eligible for resident tuition. AB 343 waives this one-year residency requirement. The author believes this will ensure that SIV students are able to pursue their education, rebuild, and improve their lives and the lives of their families. *It should be noted that these SIVs and refugees residing in California are already eligible for state's student financial aid programs, as well as for federal financial aid programs.*

*SIVs.* In January 2006, the 109th Congress enacted the first of a series of legislative provisions to enable certain Iraqi and Afghan nationals to become U.S. lawful permanent residents (LPRs) based on their service to the U.S. government in Iraq or Afghanistan, respectively. Specifically, these individuals were made eligible for special immigrant visas (SIVs); a category of permanent employment-based admissions under the INA, whereby upon admission to the United States, holders of SIVs are immediately granted LPR status. An LPR is a non-citizen who has been granted authorization to live and work in the United States on a permanent basis. As proof of that status, a person is granted a permanent resident card, commonly called a "green card."

There are three SIV programs for Iraqi and Afghan nationals. One is a permanent program for certain Iraqis and Afghans who have worked for at least one year as translators or interpreters. This program is currently capped at 50 principal aliens (excluding spouses and children) per year. The other two SIV programs—for other Iraqis and Afghans, respectively, are temporary. Each program had an annual cap on the number of principal aliens (excluding spouses and dependents) who could receive and SIV annually over a five-year period. Current authority provides for the issuance of no more than 2,500 visas to principal Iraqi applicants after January 1, 2014 and no more than 8,500 SIVs to principal Afghan applicants after December 19, 2014.

Through the end of the 2015 federal fiscal year, more than 37,000 individuals were granted special immigrant status under the three SIV programs. Principal applicants accounted for about 15,000 of the total and the remaining 22,000 were dependent spouses and children.

*Refugees.* The admissions process for refugees is separate from and different than the process for immigrants. Each year, the President submits a report to Congress, which contains the Administration's proposed worldwide refugee ceiling and allocations among regions of the world for the upcoming federal fiscal year (FFY). Following congressional consultations, the President issues a determination setting refugee number for that year. Recent annual totals are: FFYs 2013 through 2015 (70,000 annually); FFY 2016 (85,000) and FFY 2017 (110,000). Upon entry, refugees are eligible for transitional assistance activities, including cash and medical assistance for up to eight months and various social services to help refugees become socially and economically self-sufficient.

*Resident/Nonresident Tuition and Fees.* Tuition and mandatory systemwide fees for full-time UC and CSU undergraduate students and per credit fees for CCC students in 2016-17 are as follows:

	<b>Resident</b>	<b>Nonresident</b>
<b>UC</b>	\$12,294	\$36,948
<b>CSU</b>	5,472	16,632
<b>CCC</b>	\$46 per unit	\$211 per unit

*Policy Issue.* This bill raises a fundamental policy question as to whether someone who is not a U.S. citizen (in this case, an SIV or refugee) should be provided the benefit of immediate California residency status, for purposes of receiving in-state tuition, when such a benefit is not provided to U.S. citizens residing outside California (except certain veterans), and who, if moving into the state, would have to wait one year in order to obtain residency status (if they are also financially independent). Moreover, as written, the bill provides the residency benefit to any SIV or refugee, including those that settle in the U.S. outside of California.

As a practical matter, it does not seem likely, given the difficult life circumstances SIVs and refugees encounter prior to coming to the U.S. and all challenges involved with adjusting to a new environment and culture, that they would seek to apply to and attend either a UC or CSU campus within their first year in the state. Given the CCC's open enrollment policy, however, there could be some SIVs and refugees who would seek such opportunity within that first year, though they could be dissuaded by the relatively high cost of CCC nonresident fees, as shown in the table above.

*Recommendation.* If the Committee is comfortable with the policy presented by this bill to provide a unique benefit to SIVs and refugees, staff recommends applying the bill only to the community colleges. In addition, staff recommends that the bill clarify that it applies only to SIVs and refugees who first settle in California and that it will provide a waiver of nonresident student fees rather than providing residency status.

*Prior Legislation.* AB 1899 (Mitchell)/Chapter 509, Statutes of 2012, exempted from nonresident tuition and provided eligibility for student financial aid benefits, to the same extent as refugees, to students who are victims of trafficking, domestic violence, and other serious crimes who have been granted a "T" or "U" visa under specified federal law.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

California Health+ Advocates  
 California Teachers Association  
 National Association of Social Workers – California Chapter  
 Partnership for the Advancement of New Americans

### **Opposition**

None on file.

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