

Business Immigration Options in a Trump Presidency



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The Executive Orders



Section 4 of the January 27, 2017 Executive Order states the following:

“Protecting the Nation from Foreign Terrorist Entry into the United States,” provides that the Secretaries of Homeland Security and State, the Director of National Intelligence, and the FBI Director **“shall implement a program, as part of the adjudication process for immigration benefits.”**

The Executive Orders



This "program" will develop:

- A uniform screening standard and procedure, such as in-person interviews;
- A database of identity documents proffered by applicants to ensure that duplicate documents are not used by multiple applicants;
- Amended application forms that include questions aimed at identifying fraudulent answers and malicious intent;
- A mechanism to ensure that the applicant is who he/she claims to be;
- A process to evaluate the applicant's likelihood of becoming a "positively contributing member of society" and the applicant's ability to make contributions to the national interest; and
- A mechanism to assess whether or not the applicant has the intent to commit criminal or terrorist acts after entering the United States.

The Executive Orders



Timeline:

- The Secretary of Homeland Security shall submit to the President:
 - Initial report on the progress of this directive within 60 days of the date of the EO;
 - Second report within 100 days of the date of the EO;
 - and
 - Third report within 200 days of the date of the EO.

H-1B Legislation



Practitioners should expect that the H-1B program is a target of the Trump Administration.

Draft EO (01/27/17) entitled Protecting American Jobs and Workers by Strengthening the Integrity of Foreign Worker Visa Programs stated in part:

- Our country's immigration policies should be designed and implemented to serve, first and foremost, the U.S. national interest;
- Visa programs for foreign workers, as well as all the other lawful methods of admission to our country that authorize foreign nationals to work here, should be administered in a manner that protects the civil rights of American workers and current lawful residents; and
- Prioritizes the protection of American workers.
- “(iv) consider ways to make the process for allocating H-1B visas more efficient and ensure that beneficiaries of the program are the best and the brightest:...”

H-1B Legislation



“High-Skilled Integrity and Fairness Act of 2017”- Introduced by Rep. Zoe Lofgren. Plans “to curb H-1B visa outsourcing abuse.” Act gives priority to those companies willing to pay the most. Bill includes:

- Elimination of per-country cap for EB immigrant visas.
- Re-sets current dependent wage exemption level of \$60,000.
- New H-1B dependent employer wage exemption level.
- New annual wage exemption level greater than \$130K.
- Dependent employers = More than 15% of workforce with H-1B.
- If below required wage level, employers must make attestations regarding recruitment and non-displacement of U.S. workers.
- Non-discretionary bonuses/similar compensation applied to wages.
- Eliminates Master's Degree exemption for dependent employers.

H-1B Legislation



Lofgren Bill Continued:

- Transparency: Would require employers to provide immigration paperwork to H-1B holder w/in 3 years of date petition was filed.
- Prohibits liquidated damages for H-1B workers who cease employment early.
- Replaces 4-level wage calculation with new 3-level wage formula.
- Prioritizes allocation of H-1B visas based on wages (formulaic).
- Sets aside 20% of annual allocation for small and start-up employers.
- Bridge for F-1 students to LPR:
 - Dual intent for students;
 - Permits experience gained on job for labor cert; and
 - EAD and AP for those approved EB-petitions awaiting visa availability.

H-1B Legislation



Protect and Grow American Jobs Act

On Jan. 3, Congressman Darrell Issa (R-Calif.) introduced his plan "to make sure programs are not abused to allow companies to outsource and hire cheap foreign labor from abroad to replace American workers."

H-1B and L-1 Visa Reform Act

Sens. Chuck Grassley (R-Iowa) and Dick Durbin (D-Ill.) announced on Jan. 19 their intention to reintroduce a 2007 bipartisan bill proposing reforms to these high skill programs.

H-1B Legislation



Reforming American Immigration for Strong Employment Act

On Feb. 7, Sens. Tom Cotton (R-Ark.) and David Perdue (R-Ga.) introduced the Reforming American Immigration for Strong Employment (RAISE) Act, proposing to “raise American workers’ wages by restoring legal immigration levels to their historical norms.”

Worksite Enforcement



Draft EO (01/23/17) entitled Protecting American Jobs and Workers by Strengthening the Integrity of Foreign Worker Visa Programs stated in part:

“(v) within 180 days of the date of this order,
(A) start performing site visits at places of employment of L-1 nonimmigrant workers, including third-party worksites where L-1 workers have been placed by the U.S. employers that petitioned for them; and
(B) develop a plan to expand the site-visit program within two years to cover all employment-based visa programs.”

Worksite Enforcement & Proposed Foreign Visa Revisions



- (x) “within 90 days of the date of this order, submit to the President a list of options for incentivizing and expanding participation by employers in E-Verify, including by conditioning , to the maximum extent allowed by law, certain immigration-related benefits on participation in E-Verify....”
- Reform practical training programs for F-1’s (protect U.S. workers);
- Clarify what activities are permissible or not on B-1;
- Within 90 days of order: Submit to President list of options for ensuring efficiency of H-2A program;
- Regulatory reforms to E-2;
- Regulatory reforms to J-1 Summer Work Travel program; and
- Provide report within 9 months of order related to injury (actual or potential) to U.S. workers caused by H-1B, L-1 and B-1 visa holders.

EB-5 Program Predictions



- Continuation of the Regional Center program (sunsets 4/28/2017);
- USCIS draft rules will never be promulgated in final form;
- Increase in minimum investments;
- Enhanced transparency/More timely reports of material changes;
- Required submission and approval of exemplar business plan before I-526 petitions can be filed;
- Increase in audits and site visits;
- No more hidden payments;

EB-5 Program Predictions



- Must be well-capitalized to play;
- Only USC and LPRs can own EB-5 Regional Center, New Commercial Enterprise or Job Creating Entity;
- U.S. securities law will apply extraterritorially;
- Good-faith, but swindled, investors can keep their priority dates;
- Set-aside TEA preferences will be established;
- Fund administrators will proliferate;
- Tons of regulatory oversight, studies, reports, etc.; and
- A little GOOD NEWS too!

Practice Pointers



So what can we do?

- Work with HR to create corporate policies to support employees affected by EO.
- Proactive Immigration Review.
- Prepare for FDNS Investigations.