

“Possible Executive Actions President Obama may take on Immigration” by Adam Edward Rothwell, Esq.

President Obama has stated an intention to take an executive action on immigration and that this Action will likely occur near Labor Day. While the President is logistically unable to take executive action amounting to comprehensive immigration reform, President Obama has previously utilized executive actions to create substantial change. This article discusses several strong possibilities for executive action that President Obama may take on immigration.

Extend DACA to Adults

DACA, Deferred Action for Childhood Arrivals, currently provides a degree of semi-status to young foreign citizens in the US who otherwise both lack lawful status and meet certain conditions, including US entry at least five years before passage of DACA and either prior graduation from high school or current school enrollment.

President Obama previously created DACA through an executive action, and there is a substantial chance President Obama will choose to pursue an executive action that extends DACA to millions of adults. The framework for DACA as an executive action already exists, which means the President would just have to modify language to extend the terms of DACA to adults. And being approved for DACA provides real tangible benefits to foreign citizens without status. Being approved for DACA enables a foreign citizen to receive work authorization, which as its name implies authorizes employment throughout the US.

While DACA enables work authorization, under the black letter law being approved for DACA officially provides no legal status to foreign citizens. However, since foreign citizens approved for DACA may receive work authorization and then a social security number, from a practical standpoint DACA by itself does provide a degree of legal status. As an example, my clients approved for DACA believe they have gained legal status, even though I have told them officially they still lack legal status. This is because my clients approved for DACA, similar to most foreign citizens without status, equate lawful status in the US with receipt of work authorization.

Extend Parole in Place

Last year President Obama made an executive action that provided a concept known as parole in place to undocumented foreign citizens with strong connections to US Military service. Parole in place is a relatively complicated concept in full. Yet, the basics of parole in place are not overly difficult.

Understanding parole in place requires a little bit of background. To receive a green card through family sponsorship in the US, a foreign citizen must have entered the US through a lawful point of entry. For example a foreign citizen legitimately married to a US Citizen may only receive a green card in the US if the foreign citizen initially entered the US through a legal entry point. Also parole is a term for US entry. By definition then, parole in place changes the legal status of entry for qualifying foreign citizens who cannot otherwise prove lawful entry by saying the foreign citizen legally entered the US (parole) at the point where they are located (place).

From a practical standpoint, parole in place enables foreign citizens in the US who entered through unlawful entry points to instead appear during applications for immigration benefits as having actually entered the US through lawful entry points. By extending parole in place, potentially millions of more foreign citizens without status in the US would be able to receive green cards, rather than just work authorization without official status (which is what the result would be if DACA is extended to adults).

Parole in place would likely provide President Obama with several sizeable benefits for an Executive Action over DACA. As aforementioned, extending parole in place would potentially provide millions of foreign citizens who currently lack status with the opportunity to receive green cards. Additionally, parole in place by itself does not provide an immigration benefit.

DACA provides qualifying foreign citizens with an opportunity to receive work authorization, even if they have no other grounds to receive work authorization other than DACA. However, parole in place by itself does not provide anything. Rather parole in place eliminates the barrier to green card approval due to unlawful US entry for a foreign citizen who otherwise qualifies for green card sponsorship and then approval.

Parole in place helps enable foreign citizens with legitimate grounds for a green card sponsorship to pursue that same green card sponsorship. For these reasons, parole in place in theory just assists foreign citizens who otherwise qualify for green card sponsorship to participate. Parole in place favors the value of family unity. Moreover, parole in place is considerably more confusing of a concept than DACA, and as concepts become more confusing, negative attacks on the concepts become increasingly difficult to spread. As examples, negative viral attacks or Twitter trends related to parole in place are unlikely, because among other reasons parole in place is a confusing and meaningless concept to most Americans.

Renew a form of the Life Act

The Life Act protected foreign citizens who entered the US as undocumented, as The Life Act enabled these same undocumented foreign citizens to apply for and receive green cards in the future. Under The Life Act, any US business or US Citizen immediate relative was able to sponsor an undocumented foreign citizen who entered the US through an unlawful point of entry. And simply having any paperwork submitted on their behalf under The Life Act enabled undocumented foreign citizens to apply for green cards in the future. As long as initial paperwork was filed on their behalf by the last qualifying date of The Life Act, foreign citizens received protection to apply for green cards at any later point under The Life Act. By being protected under The Life Act, foreign citizens retained the ability to move forward with any valid sponsorship for a green card in the future (although a \$1000 penalty was required).

The best way to explain this is through a made up example:

At age 19 in 1995 Sally entered the US unlawfully by jumping the US southern border. Sally never leaves the US. Based on her unlawful US entry though, under the regular law Sally is unable to ever receive a green card in the US, even if she someday legitimately marries a US Citizen. However, in January 2001, a California based construction business named AAA Construction filed an initial form to start a green card application on behalf of Sally.

The Life Act was active in January 2001. While AAA Construction never moved forward with the application on behalf of Sally other than filing that initial form, Sally has and holds onto the one AAA Construction filing receipt notice which was submitted on her behalf. And by AAA Construction just filing that single initial form, Sally then became permanently protected under The Life Act.

Protection under The Life Act consists of the law viewing initial unlawful entry to be considered lawful entry (for a \$1000 penalty fee).

Protection under The Life Act provided Sally with the ability to apply for immigration benefits in the future similar to any foreign citizen who initially entered the US with a US Visa. Afterwards, in 2008 Sally legitimately marries a US Citizen. She applies for a green card through her marriage, pays the \$1000 penalty fee and six months later is approved without issue. Sally receives her green card. Even though Sally initially entered the US unlawfully in 1995, the Life Act enabled her to be approved just like she had entered the US lawfully with a valid Visa.

Because The Life Act provided such strong protection, it has been my experience almost every qualified foreign citizen who entered the US as undocumented and knew of The Life Act at least found a business

to file the first part of the green card paperwork on their behalf by the deadline. Most initial filings by businesses that still protected foreign citizens under The Life Act had no filing fee and took less than an hour to complete. Yet, similar to parole in place, The Life Act by itself did not provide any direct immigration benefit to foreign citizens. Foreign citizens protected under The Life Act still had to find a legitimate green card sponsor who was both willing and able to move forward with the entire green card sponsorship process.

Through an Executive Action with components of The Life Act, President Obama may engage an immigration processing change that comes as close to immigration reform as possible. Also this route favors family unity, which is a stated goal of The President. Additionally, similar to parole in place, The Life Act by itself does not provide an immigration benefit but instead enables foreign citizens who entered without status the opportunity to be sponsored. Hence, this type of potential Executive Action is arguably not providing immigration benefits to unqualified, undocumented aliens. Rather it would just provide millions of more undocumented foreign citizen in the US with opportunities to move their lives forward based on legitimate immigration sponsorship for which they already (or might in the future) qualify.

Potential executive action on immigration undertaken by President Obama is admittedly controversial. And while I support immigration reform, this article was not written to either argue a side or opinion on the validity or rationale for any specific action. Rather all information seems to support that President Obama will be making major change in the direction of immigration reform through executive action in the near future. As a result, this article was written to provide information on several routes detailing what the expected forthcoming executive action on immigration by President Obama is likely to be.

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