

## **PRESIDENT OBAMA'S IMMIGRATION ACCOUNTABILITY EXECUTIVE ACTION PLAN**

### **LEGAL AUTHORITY FOR DEFERRED ACTION**

After years of partisan squabbling, on November 20, 2014, President Obama announced an immigration reform package called the Immigration Accountability Executive Action. He did this because the Republicans in the House of Representatives have refused to bring the Comprehensive Immigration Reform bill passed by the Senate last year with bi-partisan support to the floor for a vote. Although the Republicans have criticized President Obama for violating the Constitutional separation of powers, legal scholars believe that he has the authority to bypass Congress and act through Executive Action. The executive branch's authority to grant deferred action is derived from the federal immigration statute and regulations and the long standing principle of prosecutorial discretion used by every law enforcement agency. Just as a prosecutor can exercise prosecutorial discretion in deciding which cases to bring to trial with his limited resources, likewise Immigration can prioritize which cases to focus on for deportation and removal with their limited resources. In fact, Immigration is already doing so. Over the past 50 years, both Republican and Democratic presidents have designated various groups of people for temporary relief from immigration enforcement. Obama's Executive Action is merely an expansion of Immigration's exercise of prosecutorial discretion to include more people – namely, parents of US citizens and Lawful Permanent Residents. This policy will shift enforcement priorities to protect families and focus on: 1) suspected terrorists, convicted felons, convicted gang members, and people apprehended at the border; 2) people convicted of serious or multiple misdemeanors; and very recent entrants; and 3) those who after 1/1/14, failed to leave under a removal order or who returned after removal.

### **WHO IS ELIGIBLE?**

The President's announcement offers deferred action – a temporary relief from removal for 3 years to an estimated population of 4 to 5 million people. To qualify the undocumented aliens must be able to prove that:

1. they have resided continuously in the United States since January 1, 2010;
2. they were physically present in the United States on November 20, 2014;
3. they are the parent of a US citizen child or lawful permanent resident, born by November 20, 2014; and they have a clean criminal record.

The applications setting forth all of the requirements will be issued by May, 2015. If their application is approved they will receive a temporary work permit good for (3) years. They can also obtain a social security number and a driver's license.

## **RISKS OF APPLYING**

While there will be a good chance of approval for qualified applicants, each application will be decided on a case-by-case basis, and those who are denied deferred action could be at risk of deportation. Whether Immigration pursues enforcement against individuals denied deferred action will depend on whether that individual is an enforcement priority. According to their website: "Information provided in your request is protected from disclosure to Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) for the purpose of immigration enforcement proceedings unless you meet the criteria for the issuance of a Notice to Appear or a referral to ICE under the criteria set forth in USCIS' Notice to Appear guidance individuals who are granted deferred action will not be referred to ICE. The information may be shared; however with national security and law enforcement agencies, including ICE and CBP, for purposes other than removal, including: assisting in the consideration of the deferred action request; to identify or prevent fraudulent claims; for national security; or for the investigation or prosecution of a criminal offense. This policy covers family members and guardians."

Significantly, deferred action does not confer legal status. The grant is temporary, so those granted the status could be at risk of deportation if the status expires. Further, a new Republican president could revoke deferred action or discontinue the program entirely in two years.

## **OTHER BENEFITS OF THE PROGRAM**

Besides the Deferred Action for Parents, numerous other benefits are contained in Obama's Executive Action. Immigration will greatly expand the pool of the so called "dreamers", people brought to the US as children eligible for the Deferred Action for Childhood Arrivals ("DACA") program first created in June 2012, by eliminating the age cap. When first established, DACA, required that the applicant be under age 31 at the time of the application, but the new program has no age limit. Further, the initial DACA program granted deferred action for (2) two years. The new program will grant deferred action for (3) three years.

Significantly, the new program will also expand the I-601A provisional waiver program. The I-601A program allowed individuals who were not admissible due to their prior unlawful presence to seek a waiver of inadmissibility while in the United States. If approved, the applicant departs the US, attends a visa interview, at the U.S. consulate in their home country, and then the applicant is generally granted an immigrant visa without delay. To obtain a waiver, an applicant had to show that the bar to admission would impose an extreme hardship to a US citizen spouse. The President's reforms expands the categories of family members who are eligible to apply under the Provisional Unlawful Presence Waivers rule to also include spouses

and children of lawful permanent residents and sons and daughters of U.S. citizens. The new policy will significantly expand the number of persons able to take advantage of the waiver process.

Taken together Obama's Executive Action is the most significant expansion of Immigration law in decades.