

Immigration Law Update

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Obama Immigration Executive Action: How It Affects Business and Employment

In a bold move, on November 20, 2014, President Barack Obama announced his Immigration Accountability Executive Actions to address flaws in the current immigration system. The plan contains three parts:

- 1) Enhanced border enforcement and possible employer crackdowns for ongoing immigration violations;
- 2) Administrative relief from deportation, which will allow certain undocumented immigrants to apply to remain in the United States; and
- 3) Business-friendly policies to enhance our competitiveness and attract foreign investment and talent.

While the focus has been on the administrative relief, the rest of the plan offers potential improvements for some employment-focused immigration categories:

- L-1B specialized knowledge workers:
 - Clarifying the rules to bring greater coherence and integrity, to “enhance companies’ confidence in the program.”
- H-4 spouses of H-1B workers:
 - Providing work authorization to spouses once the H-1B worker’s green card process is well underway.
- Foreign nationals caught in a backlog while seeking permanent resident status:
 - For foreign workers in line for a green card, removing unnecessary restrictions on natural career progression without being tied to one job;
 - For their spouse and children, providing work authorization at an earlier stage through a registration process; and
 - Allowing spouses and children of lawful permanent residents to apply for waivers of unlawful presence without leaving the U.S.
- For F-1 foreign students eligible to work after graduation from a U.S. college or university:
 - Expanding the degree programs eligible for extended periods of work beyond 12 months.

- For foreign inventors, researchers and founders of startup enterprises:
 - Making the “national interest waiver” category available for permanent resident status; and
 - Offering temporary parole in the U.S. under the “significant public benefit” standard.
- Employers using the PERM process prior to sponsoring foreign workers for green cards:
 - Modernizing the process, including the possibility of expedited, premium processing; and
 - Identifying demonstrated surplus and shortage occupations.

Building on the existing Deferred Action for Childhood Arrivals (DACA) program, through which young adults brought to the U.S. as children will not be deported, the administrative relief plan has the following provisions for those here more than five years.

- **Deferred Action for Parents (DAP):**
 - Requirements for the parent:
 - Have a U.S. citizen child (of any age); or
 - Have a lawful permanent resident child (of any age);
 - Arrived in the U.S. by January 1, 2010;
 - Have been continuously present in the U.S. since January 1, 2010;
 - Have been present on November 20, 2014, when the Executive Order was issued;
 - Pass background checks; and
 - Pay taxes (though evidence of payment of back taxes is not required).
 - Relief:
 - Eligible to apply for deferred action, which will be granted for a 3-year period and can be extended; and
 - Work authorization comes with the DAP approval.
 - Timing:
 - The process should be available by spring 2015.
- **Expansion of Deferred Action for Childhood Arrivals (DACA):**
 - Requirements for the applicant:
 - Arrived in the U.S. before turning 16 years old;
 - Arrived in the U.S. by January 1, 2010;
 - Have graduated from high school;
 - Have been continuously present in the U.S. since January 1, 2010;
 - Have been present on November 20, 2014, when the Executive Order was issued; and
 - Pass background checks.
 - Relief:
 - Eligible to apply for deferred action, which will be granted for a 3-year period, and can be extended; and
 - Work authorization comes with the DAP approval.
 - Timing:
 - The plan is to have applications available by January 2015.

The administrative relief plan is a step in the right direction toward fixing our country's broken immigration system; however, the plan has the following limitations:

- Neither DACA or DAP grants any status;
- Only temporary reprieve from deportation is available;
- The programs do not grant green cards or citizenship;
- They do not provide for any path to green cards or citizenship;
- They are not available immediately;
- Many undocumented persons will not be eligible; and
- The plan relies on the President's prosecutorial discretion authority, recognizing that immigration enforcement is necessarily selective and that Congress funds capacity for about 400,000 deportations each year.

Nevertheless, the plan could expand the legal workforce by about four million jobs.

Employers and businesses should be alert for opportunities to take advantage of the components of the plan.

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