

IMMIGRATION ALERT: November 21, 2014

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OBAMA ANNOUNCES EXECUTIVE ACTIONS ON IMMIGRATION

On November 20, 2014, President Barack Obama issued a much anticipated announcement regarding various immigration-related executive actions that have been the subject of media attention for the last several months. The President did not provide too many specifics during his announcement. However, within a few hours of his speech, the majority of the government agencies that are involved in the immigration process issued press releases and memoranda providing additional information. Below is a consolidated summary of the most important provisions and includes the most up to date information as of November 21, 2014. Many of these provisions remain unclear. Many agencies released memoranda on November 20, 2014 indicating that any changes that will be made will be done so via regulations or the issuance of agency policy memoranda which may take up to several months to implement.

1. At the White House briefing that occurred before the President announced his executive actions, information was released that these reforms would include some relief to the approximately 400,000 nonimmigrants with approved immigrant petitions that are unable to complete the green card process due to oversubscription in the employment-based green card categories. This measure would potentially allow these nonimmigrants to apply for adjustment of status before an immigrant visa would be available to them. However, neither the White House nor any of the subsequently released memoranda or press releases provide information about this measure. Therefore, it is unclear if this measure will be implemented by the U.S. Citizenship and Immigration Services (USCIS).
2. Issuance of new guidance by the USCIS with respect to the L-1B Intracompany Transferee Work Visa for individuals with specialized knowledge. This work visa is notorious for being heavily scrutinized and having request for evidence rates of up to 68% in the last several years. This will be provided via USCIS policy memoranda.
3. Finalizing the regulations released in May 2014 that would make H-4, Dependent Spouses of H-1B Nonimmigrants, eligible to apply for an Employment Authorization Document as long as the principal H-1B nonimmigrant is far enough along in the green card process. This regulation is expected to be finalized in December or January.
4. Clarification of the terms "same or similar" for purposes of the American Competitiveness in the Twenty-First Century Act (AC21) which provides for green card portability to allow foreign nationals to

more easily port their previously approved immigrant petitions to new employers. This will be provided via USCIS policy memoranda.

5. Extending the amount of time that foreign students in the STEM fields may be employed in the United States pursuant to Optional Practical Training (OPT), expanding the fields that are included in the STEM field designations and requiring academic institutions to have stronger relationships with the foreign national to ensure that the OPT is related to the students' course of study. The Department of Homeland Security (DHS) has also directed Immigration Customs Enforcement (ICE) and USCIS to implement steps to protect U.S. workers by making sure that OPT employment does not infringe on U.S. labor market protections. This will be implemented via regulation.
6. Expanding the STEM extension benefit to foreign students pursuing a post-master's degree in a non-STEM field when their first degree was in a STEM field.
7. Updating the labor certification process through the review and issuance of new regulations to the PERM program, specifically modernizing recruitment requirements, identification of shortages of certain occupations, clarifying an employer's obligations in the PERM process, possibly providing for premium processing for faster adjudication and review, and providing for a review process whereby nonmaterial errors could be addressed. These changes would be made by regulation.
8. Greater collaboration between the USCIS and the U.S. Department of State (DOS) with the goal of making immigrant visas available to eligible foreign nationals and simplifying the Visa Bulletin system so that this information can be more easily relied upon. The DOS has been asked to improve their system for allocating immigrant visas and communicating this information to the USCIS.
9. Creation of an interagency group consisting of the Department of Labor, DHS, Department of Justice, Equal Employment Opportunity Commission and National Labor Relations Board with the goal of ensuring the consistent enforcement of labor, employment and immigration laws throughout all agencies. To this effect, this group will work together to develop consistent policies and procedures, standards for sharing information among agencies, etc.
10. Parole will be granted, on a case by case basis, to certain investors, researchers, and start-up founders to come to or remain in the United States. These individuals would be required to meet job creation criteria, have substantial investor financing and meet resource and income thresholds. This will be implemented via regulation.
11. National Interest Waivers (NIW) will include foreign entrepreneurs, researchers, inventors and founders of start-up enterprises. The USCIS will be issuing policy guidance to clarify the NIW standards and requirements.
12. Undocumented aliens who have been in the United States for five years and who have children who are U.S. Citizens or Lawful Permanent Residents and who were born before November 20, 2014 would be granted protection from deportation and authorization to work as long as they successfully complete background checks and pay taxes. This component is being referred to as "Deferred Action for Parental Accountability (DAPA)".
13. Deferred Action for Childhood Arrivals (DACA) program would include individuals who were brought to the United States before the age of 16 and have been living in the United States since January 1, 2010.
14. Extending the employment authorization period for DACA recipients from two to three years.

15. Prioritizing deportations to include those that are suspected terrorists, convicted felons and gang members and individuals who are apprehended at the border, convicted of serious or multiple misdemeanors, and individuals who had a removal order, but did not depart the United States after January 1, 2014 or returned to the country after they were removed.
16. Expansion of the Victims of Criminal Activity U nonimmigrant visa and Victims of Human Trafficking T nonimmigrant visa to include three additional qualifying offenses: extortion, forced labor and fraud in foreign labor contracting which can be certified by the Department of Labor.
17. Discontinuation of the Secure Communities program which sought to create a partnership between state, federal and local law enforcement and replacing it with a Priority Enforcement Program (PEP). PEP will still rely on fingerprint biometric data, but will only obtain transfer of aliens who are convicted of certain crimes that are prioritized via ICE memoranda.
18. Expansion of the eligibility for a provisional waiver to include spouses and children of Lawful Permanent Residents as well as the clarification of the definition of extreme hardship.
19. Naturalization: allowing for naturalization applicants the option of paying for the application processing fees via credit card and consideration of the creation of a partial waiver so that more individuals with low enough income levels can apply for citizenship (after a study is conducted by the USCIS).

Additional information about the implementation of these measures (including whether the USCIS introduces a regulation to allow individuals with approved I-140 petitions to file for adjustment of status even if their priority dates are not yet available, as discussed above in Point 1) will be covered in our firm's further Immigration Updates when it becomes available.