

Publications

Immigration Alert: President Obama's Immigration Accountability Executive Actions

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CLIENT ALERT | 11.21.2014

On November 20, 2014, President Obama announced a number of executive actions (also known as the Immigration Accountability Executive Actions).

One of the executive actions focused on policies supporting U.S. high-skilled businesses and workers. A link to this executive action can be found [here](#). In this action, President Obama directs new policies and regulations that will support our country's high-skilled businesses and workers by improving the ability of U.S. businesses to hire and retain highly skilled foreign-born workers, while also providing the workers with increased flexibility to make natural advancements with their current employers or seek similar opportunities elsewhere.

Within this action, he directs the finalization of the regulation *providing certain H-4 spouses the ability to obtain an Employment Authorization Document*. The action then addresses a number of issues that are summarized below.

A. Modernizing the Employment-Based Immigrant Visa System

This action addresses the problem of extremely long waits for immigrant visas due to the low green card numerical limits established by Congress. To address these issues, the following actions are being taken:

(1) U.S. Citizenship and Immigration Services (USCIS) is directed to work with the Department of State to ensure that all immigrant visas authorized by Congress are issued to eligible individuals when there is sufficient demand for such visas.

(2) USCIS is asked to work with the Department of State to improve the system for determining when immigrant visas are available to applicants during the fiscal year.

(3) USCIS is directed to consider other regulatory or policy changes to better assist and provide stability to the beneficiaries of approved employment-based immigrant visa petitions. Specifically, USCIS has been asked to consider amending its regulations to ensure that approved, long-standing visa petitions remain valid in certain cases where individuals seek to change jobs or employers.

B. Reforming “Optional Practical Training” for Foreign Students and Graduates from U.S. Universities

This action directs the Immigration and Customs Enforcement (ICE) and USCIS to propose changes to expand and extend the use of the existing OPT program and require stronger ties between OPT students and their colleges and universities following graduation.

C. Promoting Research and Development in the United States

USCIS is directed to issue guidance or regulations to clarify the standard by which a national interest waiver can be granted, with the aim of promoting its greater use for the benefit of the U.S. economy. USCIS is also directed to propose a program that will permit the grant of parole status to inventors, researchers, and founders of start-up enterprises to temporarily pursue research and development of promising new ideas and businesses in the United States, rather than abroad.

D. Bringing Greater Consistency to the L-1B Visa Program

USCIS is directed to issue a policy memorandum that provides clear, consolidated guidance on the meaning of “specialized knowledge” to bring greater coherence and integrity to the L-1B program and improve consistency in adjudications.

E. Increasing Worker Portability

This action recognizes the uncertainty and hardship that many foreign workers face who have filed for adjustment of status, but are unable to become permanent resident due to a lack of immigrant visas, and wish to change jobs. In order to “port” their pending adjustment, their new job must be in the “same or similar” occupational classification as their old job.

The USCIS is directed to issue a policy memorandum to provide additional agency guidance and clarity with respect to the types of job changes that constitute a “same or similar” job. The guidance will make clear that a worker can accept a promotion to a supervisory position or otherwise transition to related jobs, and allow for natural career progression without affecting their pending adjustment application.

Information regarding the other executive actions, including copies of the executive actions, can be found [here](#). The following provides a quick summary of some of the other important actions:

- Department of Labor is directed to review the PERM program and regulations in an effort to modernize the system. A copy of the Department of Labor Fact Sheet can be found [here](#).
- Deferred Action for the parents of U.S. citizen and lawful permanent resident children who have been in the U.S. since January 1, 2010. Deferred Action will be granted for 3 years. These individuals will also be

eligible for work authorization. Applications will be made available within 180 days.

- Expansion of Deferred Action for Childhood Arrivals (DACA) to remove the age cap and move the continuous presence date up to January 1, 2010. DACA will now be granted for 3 years (including those with pending renewal applications).
- Department of Homeland Security will implement a Southern Border and Approaches Campaign Strategy.
- Department of Homeland Security will implement a new department-wide enforcement and removal policy that places top priority on national security threats and felons.

Many of the specific details, including the timeline of implementation, have not yet been determined. We will provide you with additional information as details become available. If you have any questions, please contact your Vorys attorney.