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President Obama Announces Executive Actions on Immigration

Last night, President Obama announced broad executive changes to the U.S. immigration system to defer deportation for certain undocumented immigrants, to provide additional resources for border security, and to expand work authorization for certain highly skilled workers.

Specifically, under President Obama's actions, an undocumented immigrant is eligible for relief from deportation if the immigrant meets all of the following:

- is a parent of a U.S. citizen or lawful permanent resident
- has been in the U.S. for at least five years
- passes a background check
- pays required taxes

Starting in the spring, qualified undocumented immigrants can apply for deferred deportation for an initial period of three years. President Obama also announced plans to expand the Deferred Action for Childhood Arrivals (DACA) program to defer deportation for children brought to the U.S. illegally before January 1, 2010. Previously, only children brought to the U.S. before June 15, 2007, qualified for DACA. In addition to deferring deportation for select undocumented immigrants, President Obama also announced increased resources for border security and clarified that the priority for deportation will be criminals (in particular, felons and gang members) and individuals who recently crossed the border.

Finally, President Obama announced plans to "make it easier and faster for highly skilled immigrants, graduates, and entrepreneurs to stay and contribute to our economy, as so many business leaders proposed." The specific changes, however, remain unclear.

The U.S. Citizenship and Immigration Services (USCIS) did issue preliminary guidance yesterday indicating the following regarding areas most relevant to employment-based immigration law:

- The USCIS will work with the Department of State to develop a method to allocate immigrant visas to ensure that all immigrant visas authorized by Congress are issued

to eligible individuals when there is sufficient demand for such visas.

- The USCIS will work with the Department of State to modify the Visa Bulletin system to more simply and reliably make determinations of visa availability.
- The USCIS, to give relief to workers facing lengthy adjustment delays, will provide clarity on adjustment portability to remove unnecessary restrictions on natural career progression and general job mobility.
- The USCIS, to benefit the U.S. economy, will clarify the standard by which a national interest waiver may be granted to foreign inventors, researchers, and founders of start-up enterprises.
- The USCIS will authorize parole, on a case-by-case basis, to eligible inventors, researchers, and founders of start-up enterprises who may not yet qualify for a national interest waiver, but who have been awarded substantial U.S. investor financing, or otherwise hold the promise of innovation and job creation through the development of new technologies or the pursuit of cutting-edge research.
- The USCIS will finalize a rule to provide work authorization to the spouses of certain H-1B visa holders who are on the path to lawful permanent resident status.
- The USCIS will work with Immigration and Customs Enforcement (ICE) to develop regulations for notice and comment to expand and extend the use of optional practical training (OPT) for foreign students, consistent with existing law.
- The USCIS will provide clear, consolidated guidance on the meaning of “specialized knowledge” to bring greater clarity and integrity to the L-1B program, to improve consistency in adjudications, and to enhance companies’ confidence in the program.

The implementation of President Obama’s executive plans may pose a challenge, as some members of Congress have disputed his authority to unilaterally reform the immigration system. While maintaining his executive authority, President Obama renewed his calls for Congress to pass comprehensive immigration reform. We will continue to provide updates as more information regarding the proposed executive actions become available.

CONTACT US

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