



DECEMBER 2014 IMMIGRATION UPDATE

Posted on December 1, 2014 by Cyrus Mehta

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Details:

1. [Obama Takes Executive Action on Immigration](#)

Shortly after the mid-term elections, President Barack Obama initiated several executive actions on immigration.

As outlined in a series of Department of Homeland Security memoranda, the executive actions include, among other things:

6 Supporting high-skilled business and workers. The Department of Homeland Security (DHS) will take a number of administrative actions to better enable

U.S. businesses to hire and retain highly skilled foreign-born workers and strengthen and expand opportunities for students to gain on-the-job training. For example, DHS notes, "because our immigration system suffers from extremely long waits for green cards, we will amend current regulations and make other administrative changes to provide needed flexibility to workers with approved employment-based green card petitions."

Some of the actions called for in the memo include:

- U.S. Citizenship and Immigration Services (USCIS) working with the Department of State (DOS) to improve the system for determining when immigrant visas are available to applicants during the fiscal year. DOS has agreed to modify its visa bulletin system "to more simply and reliably make such determinations," and the memo states an expectation that USCIS will revise its current regulations "to reflect and complement these proposed modifications."
- USCIS considering "amending its regulations to ensure that approved, long-standing visa petitions remain valid in certain cases where seek to change jobs or employers."
- U.S. Immigration and Customs Enforcement (ICE) developing regulations for notice and comment to expand the degree programs eligible for Optional Practical Training (OPT) and to extend the time period and use of OPT for foreign STEM (science, technology, engineering, and mathematics) students and graduates.
- USCIS issuing guidance or regulations to clarify the standard for granting a national interest waiver green card, with the aim of promoting its greater use.
- USCIS proposing a program allowing parole status, on a case-by-case basis, to inventors, researchers, and founders of start-up enterprises who may not yet qualify for national interest waivers 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 regulation will include income and

resource thresholds.

- USCIS issuing a policy memorandum to provide "clear, consolidated guidance" on the meaning of "specialized knowledge" in adjudicating L-1B petitions.
- USCIS issuing a policy memorandum providing guidance on worker portability, specifically with respect to what constitutes a "same or similar" job, with a goal of removing "unnecessary restrictions" on "natural career progression."

The memo explaining these actions is available at http://www.dhs.gov/sites/default/files/publications/14_1120_memo_business_actions.pdf

Enforcement efforts, including commissioning three Joint Task Forces. Joint Task Force East, Joint Task Force West, and Joint Task Force Investigations. All three will incorporate elements of the U.S. Coast Guard, U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, and U.S. Citizenship and Immigration Services. Joint Task Force East will be responsible for the southern maritime border and approaches. Joint Task Force West will be responsible for the southern land border and the West Coast. Joint Task Force Investigations will focus on investigations in support of the geographic Task Forces.

The overarching goals of the Southern Border and Approaches Campaign, of which the Joint Task Forces are a part, will be to enforce immigration laws and interdict individuals seeking to enter the U.S. without authorization; degrade international criminal organizations; and decrease the threat of terrorism. The memo explaining these actions is available at http://www.dhs.gov/sites/default/files/publications/14_1120_memo_southern_border_campaign_plan.pdf.

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Ending the Secure Communities program and replacing it with the Priority Enforcement Program, and prioritizing criminal offenses for arrest, detention, and removal. The memos explaining these actions are available at http://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf and

http://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf.

- Expanding Deferred Action for Childhood Arrivals (DACA) to encompass a broader class of children. DACA eligibility had been limited to those who were under 31 years of age on June 15, 2012, who entered the United States before June 15, 2007, and who were under 16 years old when they entered. DACA eligibility will be expanded to cover all undocumented immigrants who entered the United States before the age of 16, and not just those born after June 15, 1981. The entry date will be adjusted from June 15, 2007 to January 1, 2010. The relief (including work authorization) will now last for three years rather than two. The memo explaining this action is available at http://www.dhs.gov/sites/default/files/publications/14_1120_memo_deferred_action.pdf.
- Extending eligibility for deferred action to parents of U.S. citizens and lawful permanent residents. This new program, called Deferred Action for Parental Accountability (DAPA), will include individuals who (i) are not removal priorities under the new policy, (ii) have been in the United States at least five years, (iii) have children who on the date of the announcement (November 20, 2014) were U.S. citizens or lawful permanent residents, and (iv) present no other factors that would make a grant of deferred action inappropriate. These individuals will be assessed for eligibility for deferred action on a case-by-case basis. They may then apply for work authorization, provided they pay a fee. Each individual will undergo a background check of relevant national security and criminal databases, including DHS and FBI databases. The memo explaining this action is available at http://www.dhs.gov/sites/default/files/publications/14_1120_memo_deferred_action.pdf.
- Expanding I-601A provisional waivers to spouses and children of lawful permanent residents. The provisional waiver program DHS announced in January 2013 for undocumented spouses and children of U.S. citizens will be expanded to include the spouses and children of lawful permanent residents, as well as the adult children of U.S. citizens and lawful permanent residents. At the same time, the administration will further clarify the "extreme hardship" standard that must be met to obtain the waiver. The

memo explaining this action is available at

http://www.dhs.gov/sites/default/files/publications/14_1120_memo_i601a_waiver.pdf.

- Revising parole rules. DHS will begin rulemaking to identify the conditions under which "[talented entrepreneurs](#)" [should be paroled into the United States](#), on the ground that their entry would yield a "significant public economic benefit." DHS will also support the military and its recruitment efforts by working with the Department of Defense to address the availability of [parole-in-place and deferred action to spouses, parents, and children of U.S. citizens or lawful permanent residents who seek to enlist in the U.S. Armed Forces](#). DHS will also issue guidance to clarify that when anyone is given advance parole to leave the United States, including those who obtain deferred action, they will not be considered to have departed. Undocumented aliens generally trigger a 3- or 10-year bar to returning to the United States when they depart. The memos explaining these actions are available at http://www.dhs.gov/sites/default/files/publications/14_1120_memo_business_actions.pdf (entrepreneurs), http://www.dhs.gov/sites/default/files/publications/14_1120_memo_parole_in_place.pdf (parole-in-place and deferred action), and http://www.dhs.gov/sites/default/files/publications/14_1120_memo_arrabally.pdf (advance parole).

President Obama also issued a memorandum directing the Secretaries of State and Homeland Security, in consultation with other federal agencies, to develop recommendations for improving the U.S. visa system. The recommendations will be developed in consultation with "business people, labor leaders, universities, and other stakeholders." The recommendations will be geared toward streamlining and improving the legal immigration systemCincluding immigrant and non-immigrant visa processingC"with a focus on reforms that reduce government costs, improve services for applicants, reduce burdens on employers, and combat waste, fraud, and abuse in the system."

In consultation with stakeholders with relevant expertise in immigration law, they will also develop recommendations "to ensure that administrative policies, practices, and systems use all of the immigrant visa numbers that the Congress provides for and intends to be issued, consistent with demand." In consultation

with technology experts inside and outside the government, they will develop recommendations "for modernizing the information technology infrastructure underlying the visa processing system, with a goal of reducing redundant systems, improving the experience of applicants, and enabling better public and congressional oversight of the system."

President Obama also announced that he is establishing a White House Task Force on New Americans, an interagency effort "to identify and support state and local efforts at integration that are working and to consider how to expand and replicate successful models." The Task Force, which will engage with community, business, and faith leaders, as well as state and local elected officials, "will help determine additional steps the federal government can take to ensure its programs and policies are serving diverse communities that include new Americans." Among other things, the Task Force will submit an "Integration Plan" to President Obama, which will include an assessment of the members' agencies with respect to integration efforts, and recommendations. The Task Force will also identify and disseminate best practices at the state and local level, collect and disseminate data on immigrant integration, and provide technical assistance.

A letter transmitted by 136 law professors to the White House on November 20, 2014, and updated on November 25, supports President Obama's legal authority to expand the DACA program and to establish the Deferred Action for Parental Accountability (DAPA) program. It is available at <https://pennstatelaw.psu.edu/sites/default/files/documents/pdfs/Immigrants/executive-action-law-prof-letter.pdf>.

President Obama also issued an "immigration blueprint," outlined in "Building a 21st Century Immigration System," which includes additional proposals. The blueprint is available at http://www.whitehouse.gov/sites/default/files/rss_viewer/immigration_blueprint.pdf. The memoranda summarized above, along with the White House address announcing the actions and related USCIS and ICE info, are available at <http://www.dhs.gov/immigration-action>. Additional memoranda are available at <http://www.whitehouse.gov/the-press-office/2014/11/21/presidential-memorandum-modernizing-and-streamlining-us-immigrant-visa-s> (modernizing and streamlining the U.S. visa system) and <http://www.whitehouse.gov/the-press-office/2014/11/21/presidential-memorandum-creating-welcoming-communities-and-fully-integra> (establishing the White

House Task Force on New Americans).

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2. Labor Dept. To Modernize PERM Recruitment and Application Requirements

The Department of Labor (DOL) has released a fact sheet announcing that it will review the PERM labor certification program and relevant regulations with a goal of updating them. DOL noted that it has received ongoing feedback that the existing regulatory requirements governing the PERM recruitment process frequently do not align with worker or industry needs and practices.

DOL recently marked the 10th anniversary of the PERM regulations, which govern the labor certification process for the permanent employment of immigrant foreign workers and establish responsibilities of participating employers. The DOL said it has not comprehensively examined and modified the permanent labor certification requirements and process since their inception. This past fiscal year, employers submitted over 70,000 PERM applications requesting foreign workers. The majority of those job openings were for professional occupations in the information technology and science fields.

As part of the new review, DOL will seek input on the current PERM regulations, including how they can be modernized to be more responsive to changes in the national workforce. Specifically, DOL will seek input on the following:

- Options for identifying labor force occupational shortages and surpluses and methods for aligning domestic worker recruitment requirements with demonstrated shortages and surpluses;
- Methods and practices designed to modernize U.S. worker recruitment requirements;
- Processes to clarify employer obligations to ensure that PERM positions are fully open to U.S. workers;
- Ranges of case processing time frames and possibilities for premium processing; and
- Application submission and review processes and the feasibility of efficiently addressing nonmaterial errors.

DOL's Employment and Training Administration may also examine other aspects of the existing PERM regulations to further align the program design with the objectives of the U.S. immigration system and the needs of workers and

employers, and to enhance the integrity of the labor certification process.

The fact sheet is available at <http://www.dol.gov/dol/fact-sheet/immigration/perm.htm>.

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3. Labor Dept. Establishes Interagency Working Group on Worker Protections

The Department of Labor recently announced the creation of an interagency working group to identify policies and procedures that promote the consistent enforcement of federal labor, employment, and immigration laws to "protect all workers in the U.S." The announcement notes that federal agencies responsible for worker protections seek to protect all workers from exploitation and workers' rights violations, regardless of immigration status. "Many workers, however, are deterred or prevented from asserting workplace rights and protections. In some cases, employers may exploit immigration status to deter employees from asserting their rights. In other cases, the protections available to workers are unclear," the announcement notes.

The working group will comprise federal immigration enforcement agencies and federal agencies responsible for worker protections, including the Departments of Labor, Homeland Security, and Justice; the Equal Employment Opportunity Commission; and the National Labor Relations Board.

The working group will seek to:

- Ensure that agencies' immigration enforcement and worker protection policies promote workers' cooperation with labor and employment law enforcement authorities without fear of retaliation;
- Ensure that federal enforcement authorities are not used by parties seeking to undermine worker protection laws by enmeshing immigration authorities in labor disputes; and,
- Ensure the consistent enforcement of federal labor, employment, and immigration laws.

To achieve these objectives the working group will:

- Develop policies and procedures to ensure consistent enforcement of labor, employment, and immigration laws;
- Develop consistent standards and procedures for immigration agencies to

contact labor agencies when they encounter a potential labor dispute within the meaning of the Revised Memorandum of Understanding between the Departments of Homeland Security and Labor Concerning Enforcement Activities at Worksites, executed on December 7, 2011;

- Provide greater clarity to workers, worker representatives, advocates, and employers regarding processes and procedures on the intersection between immigration law enforcement and labor and employment law enforcement;
- Strengthen processes for staying the removal of, and providing temporary work authorization for, undocumented workers asserting workplace claims and for cases in which a workplace investigation or proceeding is ongoing; and
- Provide stakeholders open and transparent modes of communication with enforcement authorities.

The working group "will provide opportunities for communication with external stakeholders, including workers, worker representatives, advocates, and employers as appropriate."

The fact sheet is available at

<http://www.dol.gov/dol/fact-sheet/immigration/interagency-working-group.htm>.

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4. ABIL Global: Poland

Poland regards special economic zones as an important instrument to stimulate foreign investment. There are new investment opportunities in Polish real estate 12 years after Poland's accession to the EU.

Poland can be considered an alternative for corporate immigration as compared with other economies of East-Central Europe. Two factors provide the basis for the increased activity of foreign capital in Poland: the development of special economic zones and the lifting of limitations on purchasing real estate by foreigners in Poland.

As with other countries (e.g., China), Poland regards special economic zones as an important instrument for attracting foreign investors. Special economic zones are designated industrial areas prepared for investment for foreign

entities. In return for allocating production and operation of the company in Poland, the investor receives a special, beneficial legal status with respect to tax obligations. The primary benefit of investing in the special economic zones is property tax exemption and, above all, income tax exemption, the scale of which depends on the volume of investment. Investments in the special economic zones in Poland require a permit issued in administrative proceedings. According to the latest data, there are more than 7 thousand hectares of land waiting in Poland for foreign capital in the special economic zones.

In the near future, new rules will come into force on state aid granted to entrepreneurs operating under permits to conduct business activity in the special economic zones. The rules will facilitate provisions regulating the proportion of public funds in the investments and the method of accounting for the investments.

The attractiveness of the local market for corporate immigration depends to a large extent on the legal status of the commercial real estate market. In this respect, the current status of the Polish real estate sector has been presented in the annual report of the Polish government devoted to the acquisition of real estate by foreigners (individuals and corporate entities). The report for 2014 highlights the activity of German, Dutch, and Ukrainian capital in Poland. The reports, prepared annually by the Minister of Internal Affairs and Administration, extensively and accurately presents international trading in Polish real estate.

According to the report, in 2013, foreigners were granted a total of 252 permits for the acquisition of land property with a total area of 697.15 hectares. The vast majority of applications had been approved. In Poland, the acquisition of real estate by foreigners requires, in principle, a permit from the Minister of Internal Affairs and Administration. The source of legal restrictions is the Act on the acquisition of real estate by foreigners as of March 24, 1920. The relevant permit is also necessary for the purchase or acquisition by foreigners of shares in companies that are owners or perpetual users of real estate. By May 1, 2016, the permit also will be required for the purchase of forest and agricultural real estate by European Union (EU)/European Economic Area entities. Such status follows from the transitional provisions of the Polish accession to the EU.

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5. Firm In the News

Cyrus D. Mehta was a Discussion Leader on *Working Around the H-1B Debacle*, AILA Mexico District Chapter Conference, Buenos Aires, Argentina, November 14, 2014.

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