



IMMIGRATION UPDATE - NOVEMBER 09, 2020

Posted on November 9, 2020 by Cyrus Mehta

Headlines:

[President-Elect Biden Pledges Immigration-Related Actions in First 100 Days](#) –

President-elect Joe Biden has pledged in the first 100 days of his administration to set in motion a number of immigration-related actions. Some of his proposals could be launched immediately, while others may require new regulations or Congressional action.

[ETA Final Rule Revises Adverse Effect Wage Rate Methodology for H-2A](#)

[Temporary Agricultural Workers](#) – The Employment and Training

Administration is amending its regulations, effective December 21, 2020, to revise the methodology by which it determines the hourly Adverse Effect Wage Rates for non-range agricultural occupations performed by temporary foreign workers in H-2A nonimmigrant status

[EOIR Finalizes Reorganization With Amendments](#) – The Executive Office for Immigration Review (EOIR) adopted as final the provisions of an interim rule published in August 2019, with additional amendments. The reorganization includes the establishment of EOIR's Office of Policy in 2017 and clarification of the EOIR Director's authority to adjudicate cases.

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President-Elect Biden Pledges Immigration-Related Actions in First 100 Days

President-elect Joe Biden has pledged in the first 100 days of his administration to set in motion a number of immigration-related actions. Some of his proposals could be launched immediately, while others may require new regulations or Congressional action. Trump administration rules finalized

before President Trump leaves office are likely to require a lengthy regulatory process to change, unless the Congressional Review Act is invoked, which would allow Congress to override any new regulations if Congress acts within 60 days.

A non-exhaustive list of employment, labor, and student-related highlights of President-elect Biden's immigration plans includes:

- Reforming the visa program for temporary workers in select industries that depend on seasonal and short-term workers. President-elect Biden pledges to work with Congress to allow workers in certain industries to switch jobs and to allow employers to certify the labor market's need for foreign workers. "Employers should be able to supply data showing a lack of labor availability and the harm that would result if temporary workers were unavailable," the plan states. He also pledges "strong safeguards that require employers to pay a fair calculation of the prevailing wage and ensure the right of all workers to join a union and exercise their labor rights."
- Ensuring that high-skilled temporary visas "not be used to disincentivize recruiting workers already in the U.S. for in-demand occupations." The plan states that President-elect Biden will work with Congress to establish a "wage-based allocation process" and enforcement mechanisms to ensure that temporary visas are aligned with the labor market "and not used to undermine wages."
- Eliminating the limits on employment-based visas by country.
- Providing "a path to legalization for agricultural workers who have worked for years on U.S. farms and continue to work in agriculture."
- Supporting family-based immigration. Under the plan, "any approved applicant" could receive a temporary nonimmigrant visa until their permanent visa is processed. Spouses and children of green card holders would be treated as immediate relatives and would be exempted from caps. Parents could bring their minor children with them when they immigrate to the United States.
- Increasing the number of visas for permanent, work-based immigration based on macroeconomic conditions. President-elect Biden pledges to work with Congress "to increase the number of visas awarded for permanent, employment-based immigration—and promote mechanisms to temporarily reduce the number of visas during times of high U.S.

unemployment." He will also "exempt from any cap recent graduates of PhD programs in STEM fields" in the United States. President-elect Biden "believes that foreign graduates of a U.S. doctoral program should be given a green card with their degree and that losing these highly trained workers to foreign economies is a disservice to our own economic competitiveness."

- Creating a new visa category to allow cities and counties to petition for higher levels of immigrants to support their growth.
- Enforcing rules to protect both U.S. and foreign workers and focusing on "abusive employers."
- Expanding protections for undocumented immigrants who report labor violations.
- Expanding labor rights and protections for farmworkers and domestic workers.
- Reinstating the Deferred Action for Childhood Arrivals (DACA) program and ensuring that "Dreamers" are eligible for federal student aid.
- Ordering an immediate review of temporary protected status (TPS) and offering TPS holders who have been in the United States for an "extended period of time" and who have "built lives in the U.S." a "path to citizenship through legislative immigration reform."
- Rescinding "Muslim bans."

President-elect Biden also plans to develop and implement a comprehensive, multinational, four-year regional strategy to address factors driving migration from Central America, including convening a regional meeting of leaders to propose solutions.

Details:

- "The Biden Plan for Securing Our Values as a Nation of Immigrants," <https://joebiden.com/immigration/>
- "The Biden Plan to Build Security and Prosperity in Partnership With the People of Central America," <https://joebiden.com/centralamerica/>
- "A Biden Win is a Win for International Students in the U.S.—Here's Why," Study International, <https://www.studyinternational.com/news/biden-international-students-in-the-us/>

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ETA Final Rule Revises Adverse Effect Wage Rate Methodology for H-2A Temporary Agricultural Workers

The Department of Labor's (DOL) Employment and Training Administration (ETA) is amending its regulations, effective December 21, 2020, to revise the methodology by which it determines the hourly Adverse Effect Wage Rates (AEWRs) for non-range agricultural occupations performed by temporary foreign workers in H-2A nonimmigrant status using wage data reported by the Department of Agriculture's Farm Labor Survey (FLS) and the Bureau of Labor Statistics' Occupational Employment Statistics survey.

DOL said it intends to address the remaining proposals from the July 26, 2019, proposed rule in a subsequent, second final rule governing "other aspects of the certification of agricultural labor or services to be performed by H-2A workers and enforcement of the contractual obligations applicable to employers." DOL focused this final rule on "the immediate need for regulatory action to revise the methodology by which it determines the hourly AEWRs for non-range agricultural occupations before the end of the calendar year."

The agency noted that USDA's suspension of planned October data collection for the FLS and release of the report planned for the November 2020 cycle is the subject of ongoing litigation. That litigation challenges whether USDA provided adequate reasons for its decision to suspend data collection and whether it considered important aspects of its decision. A district court recently ordered USDA to proceed with the collection of FLS data for 2020, but DOL said USDA is not required to perform the FLS regardless of the litigation.

Details:

- ETA final rule, <https://bit.ly/357rywi>

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EOIR Finalizes Reorganization With Amendments

The Department of Justice's Executive Office for Immigration Review (EOIR) adopted as final the provisions of an interim rule published in August 2019, with additional amendments. The reorganization includes the establishment of EOIR's Office of Policy in 2017 and clarification of the EOIR Director's authority to adjudicate cases. The final rule took effect November 3, 2020.

The new amendments include:

- Restricting the authority of the EOIR Director regarding the further delegation of certain regulatory authorities
- Clarifying that the Director interprets relevant regulatory provisions when adjudicating "recognition and accreditation" cases
- Reiterating the independent judgment and discretion by which the EOIR Director will consider cases subject to the Director's adjudication

Details:

- EOIR final rule, <https://bit.ly/3eFKV2p>

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