



IMMIGRATION UPDATE - NOVEMBER 12, 2024

Posted on November 12, 2024 by Cyrus Mehta

Headlines:

[What Should Employers and Investors Expect in the Second Trump Term?](#) –

Former President Donald Trump's election to a second term in the White House is sure to reshape immigration law and enforcement. What should employers expect, and how can they prepare?

[Biden Administration's 'Parole in Place' Program Struck Down by Federal Judge](#)

– The judge determined that the Biden administration lacked statutory authority for the program.

[USCIS Updates SAVE ICA v38 Draft](#) – U.S. Citizenship and Immigration Services

(USCIS) has updated the draft SAVE Interface Control Agreement (ICA) v38. USCIS said that registered web services agencies can use this draft for planning purposes and to familiarize developers but that it may still be modified.

Details:

[Back to Top](#)

What Should Employers and Investors Expect in the Second Trump Term?

Former President Donald Trump's election to a second term in the White House is sure to reshape immigration law and enforcement. What should employers expect, and how can they prepare? Below are a few [highlights](#):

Expansion of "Buy American, Hire American" Policies

A second term is certain to see such policies reinforced, leading to stricter requirements for employers seeking to hire foreign nationals. These policies place pressure on companies to demonstrate that their hiring practices do not undermine job opportunities for U.S. citizens. Practically speaking, we can

expect more aggressive investigations and audits by the Department of Labor (DOL) and U.S. Citizenship and Immigration Services (USCIS) into wage levels, job descriptions, and recruitment efforts.

Stricter Limits on Visa-Sponsored Petitions

A second Trump term is likely to reduce the ability of employers to obtain work-sponsored visas for their foreign workers. The H-1B program in particular will feel the effects of new laws and regulations designed to limit H-1B eligibility and availability. Employers can expect policy changes to affect other employer-sponsored visa categories, including L-1 intracompany transfers, TN and E-3 professionals, and many others.

Limitations on Work Authorization for Students and Others

A second Trump term is likely to see efforts to roll back regulatory authorization of employment authorization categories not explicitly granted by the Immigration and Nationality Act. Policy proposals being considered include the elimination of Optional Practical Training for F-1 students, work authorization for certain H-4 spouses, and humanitarian programs such as Unite for Ukraine, Temporary Protected Status, and Deferred Action for Childhood Arrivals.

Increased Scrutiny of Consular Visa Processing and Border Entries

Companies should be prepared for potential disruptions in travel to the United States, including potential travel bans that could restrict the entry of certain foreign nationals. Increased scrutiny at consular visa interviews and during the entry process also is likely to pose challenges to business travel, cross-border hiring, and foreign nationals already employed in the United States who need to travel abroad for business or pleasure.

Effects on Investment Visas

During the prior Trump Administration, the EB-5 program remained largely unaffected by his immigration policies, but processing times were significantly longer. While a second Trump administration's potential reduction of tax liabilities for high-net-worth individuals could attract more EB-5 investors, processing delays at USCIS and the Department of State could put off potential investors. EB-5 investors, like other immigrant visa applicants, may also face additional scrutiny at consular interviews.

Increased Immigration Enforcement and Workplace Compliance

Following similar actions in Trump's first term, employers can expect continued increases in workplace audits and investigations, including greater scrutiny of Form I-9 compliance and increased enforcement against employers who have not met their obligations to verify work authorization of their employees.

Practical Steps Employers Can Take

- Be thoughtful about communicating support for foreign national workers and the leadership that hires them. Be prepared for future effects on attracting, hiring, and retaining foreign national workers.
- Determine the support needed for your sponsored workforce (including those on "non-sponsored" work permits). Identify and review your sponsored population to understand where new policies may cause disruptions, including those affected by potential travel bans.
- Review your workforce data to identify employees who may be affected by future rollbacks of work authorization and decide whether and how your company will support those employees.
- Audit your current compliance programs. Auditing Form I-9 files and Public Access Files now will relieve the company in the event of future government audits and investigations.
- Review your hiring policies. Ensure that your recruitment and onboarding materials are consistent and do not expose the company to allegations of preferential treatment in the hiring process.

The Alliance of Business Immigration Lawyers recommends that businesses consult with experienced immigration counsel to assess their current workforce and ensure compliance with current immigration regulations.

[Back to Top](#)

Biden Administration's 'Parole in Place' Program Struck Down by Federal Judge

On November 7, 2024, U.S. District Judge J. Campbell Barker, of Texas, [struck down](#) the Biden administration's "Keeping Families Together" parole-in-place policy, implemented on August 19, 2024, which allowed undocumented spouses and stepchildren of U.S. citizens who have been in the United States for at least 10 years to remain without the threat of deportation and to apply

for legal permanent residence. [Reportedly](#), up to 800,000 people were potentially affected by the policy.

Judge Barker [determined](#) that the Biden administration lacked statutory authority for the program. He also agreed with plaintiffs that the program would put a strain on the resources of the state of Texas, which would "incur concrete harm on account of increased costs" such as providing food assistance and educational and healthcare services to the additional population.

[Back to Top](#)

USCIS Updates SAVE ICA v38 Draft

Following receipt of feedback that Systematic Alien Verification for Entitlements (SAVE) user agencies offered at listening sessions last spring, U.S. Citizenship and Immigration Services (USCIS) announced on November 8, 2024, that it has updated the [draft SAVE Interface Control Agreement \(ICA\) v38](#). The link redirects users to log in to view the updated draft. USCIS said that registered web services agencies can use this draft for planning purposes and to familiarize developers but that it may still be modified. The ICA does not affect registered agencies that solely use the SAVE web browser, USCIS said.

USCIS published a [detailed list](#) of the updates made. USCIS noted that agencies "are not able to test against the draft ICA or have the available Application Programming Interface (API) endpoints until the final ICA v38 is published, currently scheduled for spring 2025."

[Back to Top](#)

Firm in the News

[Cyrus Mehta](#) was quoted by the *Times of India* in [Indian IT Companies Brace for Tighter Visa Guidelines](#). Mr. Mehta said he could see the Trump administration tightening legal immigration even though their focus so far has been on people coming through the border. "Indian IT firms will be impacted, and we already got a taste of that during the last Trump administration," he said. Mr. Mehta noted that the Trump administration could issue regulations requiring higher wages for H-1B workers that may be well above market wages and could impose even higher filing fees. "The administration can also insist on specific contracts between the IT firm and the client when H-1B workers are placed at

client sites, and if they approve the H-1B petition, can limit the validity period the end date of the contract or work order with the third-party client."

Mr. Mehta was quoted by the *Times of India* in [Citizenship by Birth to be Curtailed by Incoming U.S. President Trump, Will Impact 1 Million Indians in Green Card Queue](#). Mr. Mehta said, "If a child whose parents are in H-1B status is not issued a U.S. birth certificate, they can seek review in federal court and should win. The Trump administration is capable of taking the case to the Supreme Court to test their theory, but even if the Supreme Court has Trump-appointed justices, it does not mean that they will abide by the policies of the Trump administration if they are in direct contradiction to the U.S. Constitution."

Mr. Mehta was quoted by the *Times of India* in [The Writing on the Wall is Clear: Tighter H-1B Norms on Anvil, Perhaps With Wage-Hikes and Stiffer Vetting of Applications](#). Mr. Mehta said that the Trump administration "could make it more difficult for employers to renew H-1B visas by requiring artificially high wages and making it harder to prove that the job qualifies as a specialty occupation for H-1B classification."

[Back to Top](#)