

Comprehensive Immigration Update Debriefing The President's Executive Action For U.S. Business and Employer

This nation needs a sensible and functioning immigration system not only to address millions of undocumented who live and work in the U.S. but also to find a solution for U.S. businesses to access workers with specific needed skills and entrepreneurs to start up enterprises that create jobs that strengthen our economy so that the U.S. remains competitive in the global economy.

In an attempt to use immigration as a tool of economic and social change, on November 20, 2014, President Obama announced his plan to use executive action toward reforming the U.S. immigration system. President Obama's Executive Actions may help "make it easier and faster for high-skilled immigrants, graduates, and entrepreneurs to stay and contribute to our economy."

On the same day, Secretary of the Department of Homeland Security (DHS), Jeh Charles Johnson, published a memorandum with directives for the U.S. Citizenship and Immigration Services (USCIS) and U.S. Immigration and Customs Enforcement (ICE) to enact new policies and regulations. Proposed changes are part of reforming the employment-based immigration system to enable U.S. employers to hire and retain foreign workers in more efficient ways.


Under the current system, employment-based immigrant visas (green cards) are divided into five preference categories with a 140,000 cap established by Congress in 1990. These categories are: priority workers; professionals holding advanced degrees or persons of exceptional ability; skilled workers; special immigrants; and employment creation investors. Spouses and children accompanying the worker count toward the cap. Similar to the family immigration system, significant backlogs exist in the employment-based system due to relatively low green card numerical limits. For examples, some of foreign skilled workers who come from China, India, Mexico, and Philippine are facing 3-10 years of wait time. Because of the long wait time for green cards, U.S. businesses have relied on temporary non-immigrant visas- such as H-1B, L-1B, or O-1 visas-to retain individuals with needed skills. However, temporary visas fail to fill the need for skilled workers because as the worker's temporary status expires, his or her departure is required.

New policies and regulations will be developed to support U.S. high-skilled businesses and workers by better enabling U.S. businesses to hire and retain highly skilled foreign-born workers. U.S. employers of high-skilled foreign-born workers should be alerted to *possible* changes to the U.S. immigration system that will impact their hiring and retention of their workers. The following changes are anticipated according to memorandums.

L-1B (Intracompany Transferees) Visa Program

The L-1B visa program is critically important to multinational companies in the global economy. The program allows such companies to transfer managerial or executives, or employees with "specialized knowledge" of the company's products or processes to the United States from foreign operations.

Under current regulations, however, vague guidance and inconsistent interpretation of the term "specialized knowledge" in adjudicating L-1B visa petitions by USCIS adjudicators and U.S. consular officers has created uncertainty.



USCIS will issue a policy memorandum that provides clear, consolidated guidance on the meaning of "specialized knowledge."

Adjustment of Status and Worker Portability

Currently, many foreign workers with approved employment-based immigrant petitions are unable to file Adjustment of Status applications for green card status due to immigrant visa quota backlogs. Changes to the Department of State's Visa Bulletin and the USCIS regulations may allow foreign workers with an approved petition to file their Adjustment of Status applications earlier which will enable them to obtain employment authorization and advance parole. Further, current law allows foreign workers with a pending employment-based adjustment of status application to change jobs without jeopardizing their ability to seek lawful permanent residence, but only if the new job is in a "same or a similar" occupational classification as their old job.

USCIS will issue a policy memorandum that provides additional agency guidance with respect to the types of job changes and that remove unnecessary restrictions to natural career progression of foreign workers.

Extension of Optional Practical Training (OPT) for Certain Foreign Students

The OPT period for Science, Technology, Engineering and Mathematics (STEM) graduates may be expanded. Other changes also under consideration include allowing STEM OPT after the attainment of a master's degree where only the first degree is in a STEM field.

Further, ICE and USCIS will take steps to ensure that OPT employment is consistent with U.S. labor market protections to safeguard the interests of U.S. workers in related fields. This may include a prevailing wage requirement for OPT employment.

H-4 Spousal Work Authorization


Current law prohibits spouses of H-1B visa holders (H-4 dependent spouses) from work. However, a new proposed rule by DHS extends work authorization to certain H-4 dependent spouses of H-1B visa holders who are in the green card process. The proposed rule has not been finalized yet.

Promoting Research and Development in the U.S.

To enhance opportunities for foreign inventors, researchers, and founders of start-up enterprises wishing to conduct research and development and create jobs in the United States, USCIS will implement two administrative improvements to the employment-based immigration system: "national interest waiver" and "significant public benefit" parole.

The "national interest waiver" provided in the *Immigration and Nationality Act* (INA) permits certain non-citizens with advanced degrees or exceptional ability to seek green cards without employer sponsorship if their admission is in the national interest. USCIS will issue guidance or regulations to clarify the standard by which a national interest waiver can be granted,

Pursuant to the "significant public benefit" parole authority under the INA, USCIS also will propose a



program that will permit DHS to grant parole status, on a case-by-case basis, to 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.

DHS will take a number of administrative actions soon to better enable U.S. businesses to hire and retain highly skilled foreign-born workers, reduce wait times for employment-based immigrant visas and improve visa processing. It will also expand opportunities for students to gain on-the-job training through the OPT program. U.S. employers of high-skilled foreign-born workers should be alerted to *possible* changes to the U.S. immigration system that will impact their hiring and retention of their workers.

If you have questions about Comprehensive Immigration Reform and President Obama's Immigration Accountability Executive Action, please contact Sujin Kim, Esq. at (251) 387-2544/(251) 379-8065 or skim@gcimmigration.com

About Gulf Coast Immigration

Gulf Coast Immigration was founded to meet the growing need for comprehensive services in all aspects of immigration, including nationality law, and domestic and international legal resources for both American and foreign companies and individuals in the southern Gulf Coast region. It handles both employment- and family-based immigrant and non-immigrant visa petitions and applications with a subspecialty focusing on the U.S. Immigrant Investor Program (EB-5 Program). It also provides resources on global migration for 34 countries to assist international companies in managing the immigration process for their employees worldwide.

About KOCAMA LLC

KOCAMA LLC was established to assist both individuals and American and Foreign based multinational companies of all sizes to capitalize on the sale of goods and services, and investment opportunities created by the Free Trade Agreements. Currently it focuses on the Republic of Korea - U.S. Free Trade Agreement (KORUS- FTA). Current priorities are goods, which become tariff free in 3 years, and government procurements.

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