



NATIONAL IMMIGRATION FORUM

Summary of President's Immigration Accountability Executive Action

November 24, 2014

Overall, the president's actions are expected to help approximately 4.9 million people.

1. Expanded Deferred Action

Deferred Action for Parental Accountability (DAPA): U.S. Citizenship and Immigration Services (USCIS) will create the [new program](#) "Deferred Action for Parental Accountability." This program makes parents of all children who are U.S. citizens or legal permanent residents (LPRs) eligible for deferral from deportation for three years, which also will allow them to obtain legal work authorization. These parents must have been living in the U.S. since before January 1, 2010, have a child born as of the date of the announcement (November 20, 2014), pass a criminal background check, and pay taxes going forward. It is estimated that as many as 4.1 million people will be eligible for this new program. This program is not expected to be put into effect for six months (180 days).

Deferred Action for Childhood Arrivals (DACA): Additionally, [more people will be eligible](#) for the current DACA program, which provides temporary protection from deportation and work authorization for undocumented immigrants who came to the United States as children before age 16 and meet other requirements. Previously, only those under 31 as of the time the program was announced in 2012 were eligible, but now there will be no age cap. The program will be expanded to provide protection from deportation and provide work authorization for three years. It will change the date when someone needed to be present in the United States from June 15, 2007, to January 1, 2010. This expansion is expected to increase the number of people eligible for DACA by about 270,000. The program will be put into effect in three months (90 days).

Waiver Program: Generally, in order to seek a waiver from the three- and ten-year bars on re-entry, a person must leave the country to apply. In January 2013, the Department of Homeland Security (DHS) allowed spouses and children of U.S. citizens to request an Unlawful Presence Waiver (through form I-601A) without leaving the country. [DHS has expanded](#) this to include spouses and children of legal permanent residents and adult children of U.S. citizens. DHS will engage in rulemaking to clarify the definition of extreme hardship.

Advance Parole: [DHS clarifies](#) that those who have pending green cards, deferred action, or Temporary Protected Status (TPS) are eligible to apply for advance parole (through form 512). Those approved for advance parole can travel outside of the U.S. and re-enter the U.S. without triggering the three- and ten-year bars.

Military Parole in Place: Expands the November 2013, USCIS memorandum authorizing parole in place for certain family members of active-duty military members and veterans who are without lawful immigration status. Parole in place will now also be [available to the spouses and children of U.S. citizens who are trying to enlist in the military](#).

2. Changes Involving Businesses, Workers and Entrepreneurs

Potential Employer Protections for DACA and DAPA: Currently, employers are protected from prosecution for hiring undocumented workers if an individual needs employer documents to prove presence to apply for deferred action or if an employee receives deferred action and employers must fill out a new I-9 form. Employers have not been given complete protection from prosecution for hiring those eligible for deferred action. Discussions will be ongoing with the administration on this issue.

Preliminary Adjustment of Status: This will create a new process that will allow high-skilled workers with approved immigrant visas petitions to file for preliminary adjustment of status. After a petition of adjustment of status has been pending for six months, the applicant will be able to change jobs or be promoted while keeping their place in line for a green card. It is estimated that 400,000 people may be eligible to benefit from this type of change. These changes will require new regulations and are expected to be finalized by the end of 2015.

H-4 Visas: [In May](#) the Department of Homeland Security announced new proposed rules that would amend existing regulations regarding a dependent spouse of an H-1B worker. DHS proposed that spouses residing in the U.S. on an H-4 visa could apply for work authorization as long as the spouse has an approved LPR application. Those regulations are expected to be finalized by January.

Increasing Worker Portability: USCIS will provide additional agency guidance to bring clarity to what constitutes a “same or similar job” under current law. This will allow for increased portability in career progression.

EB-2 Visa Waiver Changes: USCIS will issue guidance or regulations to clarifying when foreign professionals with advanced degrees and individuals with exceptional ability in the sciences, arts, or business are eligible to seek a green card without employer sponsorship. USCIS will clarify the standard by which a National Interest Waiver (NIW) can be granted for an EB-2 visa exempting the entrepreneurs, researchers, inventors and founders of start-up enterprises from the job offer requirement. The [EB-2 immigrant visa](#) category generally requires a job offer and a labor certification issued by the Department of Labor (DOL). DOL regulations prohibit the issuance of labor certifications in self-employment scenarios, which means an entrepreneur, researcher, inventor, or founder will generally be unable to file an EB-2 visa petition unless he or she qualifies for a NIW.

Parole for Foreign Entrepreneurs: [USCIS will develop regulations](#) to allow DHS the discretion to grant parole to entrepreneurs under the “significant public benefit” parole authority who are able to generate a certain amount of financial investment in the U.S. or job creation as well as meet minimum income thresholds. This change would allow those not yet able to qualify for a national interest waiver to temporarily pursue development of promising new ideas and businesses in the U.S. rather than abroad.

Program Electronic Management Review System (PERM) Regulation Revisions: The DOL will be initiating a review of the PERM program and relevant regulations which govern the labor certification process for the permanent employment of immigrant foreign workers.

Optional Practical Training (OPT): USCIS and ICE will [evaluate and strengthen the OPT program](#), which allows foreign students on an F-1 visa, primarily those studying in the areas of Science, Technology, Engineering and Math (STEM), graduating from U.S. institutions, the opportunity to stay and do practical training. The agency will examine the possibility of expanding the fields of study and extending the time period for F-1 STEM graduates to stay in the U.S. The F-1 visa holder will be required to have strengthened relationships to the U.S. institution they attended to ensure the practical training furthers the students’ studies in the U.S. Also, the changes will allow students who have first degree in a STEM field and desire to obtain a second that is not in a STEM field to remain in the OPT program. Lastly, it will ensure that OPT employment is consistent with U.S. labor market protections. These changes will be accomplished through a change in regulations.

L-1B Intracompany Transferee Specialized Knowledge: The L-1B nonimmigrant classification enables a U.S. employer to transfer a professional employee with specialized knowledge relating to the organization’s interests from one of its affiliated foreign offices to one of its offices in the United States. [USCIS will issue guidance](#) to define more clearly the meaning of specialized knowledge to create consistency in approvals and denials of L-1B visa petitions.

U and T Visa Changes: The Wage and Hour Division of DOL (WHD) will add three qualifying crimes to the list of in which a U visa, provided to individuals cooperating with a law enforcement investigation, may be certified. Specifically, these will be WHD’s workplace investigations involving extortion, forced labor, and fraud in foreign labor contracting. WHD will begin to certify T visas, which are provided to victims of human trafficking. They expect to consider requests related to these new certifications beginning in early 2015.

Employment Working Group: The DOL, Department of Justice, National Labor Relations Board and Equal Employment Opportunity Commission will create a [working group](#) to promote effective enforcement of federal labor, employment, and immigration laws such as ensuring the agencies’ immigration enforcement and worker protection policies are followed and promoting workers’ cooperation with labor and employment law enforcement authorities without fear of retaliation.

Visa Modernization: USCIS working with the Department of State will work to modernize and improve the areas the immigrant visa process. The president issued a [memorandum](#) that directs the Secretaries of State and Homeland Security (Secretaries), in consultation with a number of White House Offices, the Attorney General, and the Secretaries of Agriculture, Commerce,

Labor, and Education to consult with external stakeholders and within 120 days make recommendations to streamline and improve the legal immigration system -- including immigrant and non-immigrant visa processing -- 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. Specifically, they will be working to ensure that all immigrant visas made available by Congress are issued (e.g. examining visa recapture), to improve the system for determining when the visas will be available during the year, and considering amending regulations to ensure that approved, long-standing visa petitions remain valid in certain cases in which a petition holder seeks to change a job or employer.

3. Border Security Measures

Border Security: The Department of Homeland Security (DHS) will create a [new Southern Border and Approaches Campaign Strategy](#). This change is expected to improve sharing of intelligence and coordination among the different enforcement components in DHS. No new personnel will be added to the border because Congress would need to provide additional funding for additional personnel. However, DHS has shifted significant resources previously to supplement border security. Over the summer, DHS sent hundreds of Border Patrol agents and ICE personnel to the Southwest border, and the Department of Justice (DOJ) reordered dockets in immigration courts to prioritize removal cases of recent border crossers.

DHS will create three Joint Task Forces. Each will be made up of U.S. Coast Guard, Customs and Border Protection (CBP), ICE and USCIS personnel. Joint Task Force East will be responsible for the Southern and Maritime border 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. All will be established in the next 90 days.

Reforms to the Immigration Court System: DOJ and DHS will work together to review existing Executive Office for Immigration Review (EOIR) cases to determine whether individuals in removal proceedings are eligible for deferred action under the new DHS directives. Removal proceedings will be halted for those eligible for relief, reducing backlogs in the system. At the same time, those who are not eligible for relief will face shorter waits and see their cases accelerated.

In addition, the president is supporting new regulations that adopt best practices for court systems in an effort to use limited court hearing time as efficiently as possible. DOJ will be issuing clarifying guidance to provide additional information for those seeking information on Board of Immigration Appeals (BIA) accreditation and on assistance of legal counsel for those in immigration proceedings.

4. Interior Enforcement Measures

Updated Enforcement Priorities: The president's executive action provides [clearer guidance](#) to the agencies that enforce immigration laws about who should be a low priority for deportation, especially those with strong family ties and no serious criminal history. A new DHS-wide enforcement and removal memorandum will replace the previous enforcement memoranda

issued under former ICE Director John Morton and other agency guidance on who should be prioritized for deportation. This new memorandum will guide the actions of Border Patrol agents, judges at the DHS, DOJ, and other federal law enforcement agencies and will make clear that deportations should still proceed for convicted criminals, foreigners who pose national security risks and recent border crossers. The memorandum would apply across all of DHS (including CBP in addition to ICE) and would re-clarify the prioritization of criminals for deportation. The memorandum is scheduled to take effect on January 5, 2015. Under the new DHS memorandum, prioritization is as follows:

1. Priority One

- threats to national security, including suspected terrorists and spies
- convicted felons (including aggravated felons)
- those convicted of gang-related crimes
- people newly apprehended at the border

2. Priority Two

- people convicted of significant misdemeanors
- people with multiple misdemeanor convictions
- recent entrants who entered after Jan. 1, 2014
- those who have abused visa or visa waiver programs

3. Priority Three

- people who failed to depart after being issued final removal orders (on or after Jan. 1, 2014)

Under the new enforcement memorandum, individuals who entered the U.S. before January 1, 2014, will not be priorities for removal if they are not covered by the three categories listed above.

Changes to Secure Communities: The president's executive actions will end the Secure Communities program, replacing it with the "[Priority Enforcement Program](#)." Under the new program, federal authorities will request notification from local law enforcement when an undocumented convicted felon is slated to be released. While details are sparse, the program apparently will pertain only to those convicted of certain serious crimes, and the goal will be to prioritize the deportation of dangerous criminals. The president's actions also call for DOJ to coordinate with the Bureau of Prisons to identify undocumented criminals in federal custody and inform DHS so that they will know when undocumented criminals are slated to be released, and they can remove them.

The Priority Enforcement Program also would retain detainees in special circumstances, such as a threat to national security. ICE would be required to specify that a person is subject to a final order of removal or there is other sufficient probable cause to find that the person is a removable alien, thereby addressing the Fourth Amendment concerns raised in recent federal court decisions. DHS will work with state and local law enforcement to put the new program into place.

5. Promoting Naturalization and Integration

Task Force on New Americans: Through a Presidential Memorandum, the president will create a [White House Task Force on New Americans](#) that will be led by Cecilia Muñoz, Director of the White House Domestic Policy Council, and DHS Secretary Jeh Johnson. The task force will be asked to provide a strategy for addressing immigrant integration within 120 days.

Citizenship Awareness Campaign: USCIS also will create a [citizenship awareness media campaign](#) to provide information about U.S. citizenship and the naturalization process in the 10 states where three-quarters of legal permanent residents reside (Arizona, California, Florida, Illinois, Massachusetts, New Jersey, New York, Texas, Virginia and Washington).

Naturalization Fees: USCIS also will [expand options for paying naturalization fees](#) to include credit cards by the end of 2015 and explore additional measures to expand accessibility, including studying a potential partial fee waiver for applicants whose income is more than 150 percent and no greater than 200 percent of the federal poverty level or a scaled adjustment to the fee based on a range of income levels.