

What Do the 2020 Election Results Mean for U.S. Immigration?

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Overview of Changes to Immigration and What Future Changes May Come

Immigration Changes Under Trump Administration

- Nearly 400 changes to immigration related rules and regulations
 - Source: Migration Police Institute

Taxonomy of Immigration Changes

Constitutional Amendments

Statutes

Regulations

Executive Orders

Judicial Interventions/Decision

What are Major Changes Impacting Employers and Foreign Employees?

- Constitutional amendments: none
- Statutory reform: none
- Regulatory changes:
 - Public Charge Rule
 - DOL's Reform of Prevailing Wage Levels
 - USCIS Rule to Strengthen H-1B Program
 - Effective December 7, 2020
 - J-1/F-1 Term/Status Limitations
 - Comments closed October 26, 2020 with 32k+ received

Executive Orders/Agency Actions

- Travel Bans/Immigrant & Nonimmigrant Visa Ineligibility
- Consular Practice
- DACA
- TPS Terminations
- Southern Border Policy/MPP/Family Separation and Asylum
- Operation OPTical Illusion

Executive Orders/Agency Actions

- Increase in Premium Processing Fee
- Chinese Connection with “Military Fusion Strategy”
- Revisions to Change into F-1 Student Status
- Rescission of Deference Policy
- Adjustment Interview Requirement
- H-1B Lottery Selection Process

Further Restrictions on Legal Immigration

- New DOL prevailing wage levels rule
- New H-1B rule
- New H-1B Lottery Process rule

DOL: New Computation of Prevailing Wage Levels

- Interim Final Rule – October 8, 2020
- Changes the way DOL assesses and levels prevailing wages
- Example: Software Developer in Mpls-St. Paul
 - Level 1 wage (entry level)
 - \$71,698 on October 7 → \$94,515 on October 8

DOL: New Computation of Prevailing Wage Levels

- Impact on H-1B filings
- Impact on PERM filings
- Strategies for employers
 - Alternative wage surveys
 - Delay filings

USCIS: Strengthening H-1B Non-Immigrant Visa Program

- Interim Final Rule – December 7, 2020
- Amends the definition of “specialty occupation”
- Seeks to codify restrictions against companies who place H-1B workers at third party worksites

USCIS: Strengthening H-1B Non-Immigrant Visa Program

- Codifies USCIS adjudication trends for Specialty Occupation
 - Educational requirements must have direct relationship with duties – general or unrelated fields may no longer qualify (e.g. business admin, engineering or IT)
 - Employers must now show that Bachelor's degree is always required not normally required

USCIS: Strengthening H-1B Non-Immigrant Visa Program

- Codifies no deference policy
- Redefines employer-employee relationship and specifically takes “contractor” out of definition of U.S. employer
- H-1B involving third party worksites: maximum H-1B validity period of one year

New Proposed H-1B Lottery Rule

- Announced on November 2, 2020
- Wage level rankings
- No change to priority of U.S. Master's degree lottery over non-U.S. Master's degree lottery

Immigration Status and Travel: Visa Suspension and Travel Bans

- Travel Bans Pre-COVID-19
 - Somalia, Yemen, Libya, Iran, Iraq, Eritrea, Burma, Nigeria, North Korea, Venezuela, Syria, Sudan, Tanzania, Kyrgyzstan
 - Presidential authority upheld by Supreme Court

Immigration Status and Travel: Visa Suspension and Travel Bans

- Travel Bans Post-COVID-19
 - China, Brazil, Iran, UK, Ireland, Schengen countries
 - Non-Immigrant Visas
 - Immigrant Visas
 - Embassy Closures

Immigration Status and Travel: Visa Suspension and Travel Bans

- Travel Bans Post-COVID-19
 - Student visas issued July 2020
 - National Interest Exemptions
 - Medical Personnel Exemptions
 - Embassies slowly reopening

Proposed Rule Restricting J-1 Exchange Programs and F-1 Student Visas

- New proposed rules ending Duration of Status (D/S)
- Harm to students
 - Artificial end date
 - Program restrictions and institutional changes
 - Compliance shifts to USCIS/ICE
 - Exposure to unlawful presence

Proposed Rule Restricting J-1 Exchange Programs and F-1 Student Visas

- Proposed rule impact on OPT
 - Multiple filings will be required by students
 - Likely delays in adjudication
 - Earlier filing periods
 - No 30-day filing requirement post ISSS approval
 - H1B cap gap beyond October 1

The Public Charge Rule: Where Does It Stand?

- New rules require evidence of sufficient income/assets to prove no risk of receiving public benefits
- Applies to immigrants and nonimmigrants
- Age, health, family status, wealth test
- Issues for employer to consider

Looking Forward: Immigration Under the Biden Administration

- Pledge to roll back many of Trump's immigration changes
- Overturn Executive Orders / Presidential Proclamations
- Regulations / changes to statute
 - Depends on make-up of Congress

Unilateral Action: First 100 Days

- Humanitarian Reforms:
 - Refugee Quotas, Border Policy, MPP, Wall Construction, Family Separation, Asylum Reforms
- DACA/DAPA
- TPS Review
- Eliminate Muslim Travel Bans
- Reforms to Immigration Enforcement
- Public Charge

Comprehensive Immigration Reform: Is it Possible?

- DREAMERS/Earned Legalization
- Raise quotas
- Increase work visas
- Reform of temporary visas

Changing the Culture

- Return to the believe that U.S. is a nation of immigrants
- Welcoming communities
- Net gain instead of competition
- Senate confirmed agency leadership

Questions?

Presenters



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