

Biden Changes Immigration Outlook, H-1B Visa Details TBD

Labor & Employment Law Update

By Jacqueline Lentini McCullough on February 3, 2021

Last November I mentioned that the Trump Administration enacted over 400 immigration policy changes during its tenure. The changes added burdens to visa petitions, delayed processing, and made life more challenging for everyone in the immigration community.

Executive Order Highlights

President Biden signed a slew of prepared executive orders when he took office. Some of the orders that affect the immigrant community include:

- the preservation and plans to “fortify” the Deferred Action for Childhood Arrivals (DACA) program;
- cessation of border wall construction; and
- a halt to former President Trump’s plan to exclude noncitizens from the census and the apportionment of congressional representation.

President Biden used his executive orders to stop or reverse President Trump’s executive orders, but knew that to make more permanent changes to U.S. immigration policy he would need legislative support. He delivered his bill, the U.S. Citizenship Act of 2021, to Congress on his first day seeking those changes.

U.S. Citizenship Act of 2021

This bill would modernize the country’s immigration system with a major overhaul. The new system would provide a path to citizenship for undocumented immigrants and reform both family-based and employment-based immigration policies.

Dreamers, Temporary Protected Status (TPS) holders, and farmworkers could apply for green cards immediately and for citizenship after three years. Other unauthorized immigrants could apply for temporary legal status immediately, for green cards after five years, and for citizenship if they qualify three years later.

The bill would eliminate the 3-year and 10-year unlawful presence bars that kept families apart. Measures would be put in place to eliminate family-based immigration backlogs, to reduce wait times, and to recapture lost visas.

Similar measures would occur for employment-based immigration to eliminate backlogs, reduce wait times, and recapture lost visas. H-1B holders' spouses would get employment authorization and their children would be protected from aging out of the system.

The H-1B 2022 Filing Season

The Biden administration will need time to review individual policies and procedures to make further changes. This applies to the upcoming H-1B lottery.

We don't yet know if USCIS will stay with the March 1 lottery application deadline used last year, or push the deadline later. We suspect they will use the electronic filing system instituted last year because we have not heard otherwise and it seemed to go smoothly. But we don't know.

We are waiting to hear what the administration will do with the regulation for higher wages to be favored in the employer registration selection system, which was issued on January 8, 2021 and is slated to go into effect on March 9.

Despite all this uncertainty, the H-1B lottery will happen this spring.

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