

THE FUTURE OF U.S. BUSINESS AND EMPLOYMENT-RELATED IMMIGRATION

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Considerable confusion and apprehension has developed amongst the ranks of businesses, foreign national employees, and others who depend upon the U.S. immigration system. While no specific revisions have yet taken place (other than the much-publicized temporary bans on U.S. admissions by citizens of 7/now-6 predominantly Muslim countries), some insights are provided by a recently leaked proposed Executive Order entitled “Protecting American Jobs and Workers by Strengthening the Integrity of Foreign Worker Visa Programs”. That potential Executive Order is categorically referenced here.

Impact of Executive Branch Actions

The extent to which the U.S. immigration scheme might be altered through administrative action is limited, congressional action being required if to achieve comprehensive immigration reform. The proposed Executive Order in fact would establish a commission to advise Congress as to changing immigration laws pushing towards a merit-based system.

The proposed Executive Order has as its central purpose a plan to review all regulations which currently allow foreign nationals to work in the United States, redirecting through regulatory change that the new focus be on the U.S. national interests, only.

Trump Targets

I. **H-1B specialized knowledge/professionals**

- A. Would revise so that the process becomes more efficient. (Elimination of cap lottery?)
- B. Would limit H-1B to the “best and brightest”. (Measured by high salary?)

II. **L-1**

- A. Would increase site visits starting in 180 days. Emphasis on those workplace checks will be where there is a third party placement of L-1 workers.
- B. No specific attack made on L-1A or L-1B.

III. **F-1 OPT and CPT**

Practical training is on the chopping block to some degree. Stated goal is to protect U.S. students/graduates in the U.S. job market.

- IV. **B-1** - Will clarify to ensure this business visitor category is not used for foreign nationals to perform “labor”. (Will “attending meetings” remain okay?)

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- V. **E-2** - Intent is to reform the Treaty Investor category so that it “conforms to existing law”. Unclear what this might mean.
- VI. **EB-5** - The current minimum investment levels of \$500,000/\$1 million likely will be replaced with \$1.3 million/\$1.8 million as the new minimum levels required. Also, likely to redefine what is a Targeted Employment Area (TEA) as permits investment at the lower of the two levels.
- VII. **Family-based Immigration** - The numbers allocated from the total pool may decrease, given the new objective of U.S. immigration becoming to award green cards based on merit, rather than family unification or other reasons.

What is Safe, for Now?

- **Blanket L** - No apparent intention to eliminate or modify this category.
- PERM labor certification process/green cards for all existing employment-based preference categories.
- **NAFTA** - TN? Probably up for renegotiation. L-1's?
- **H-2A Agricultural Visas** - Apparently are favored by the Trump administration, the only comment being to improve the ease of processing these.

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