



Obama's Executive Action, and its (Potential) Effects on Business Immigration



A TIMELINE OF PRESIDENT OBAMA'S ACTION ON IMMIGRATION

- 2008 President Obama reiterated a promise to introduce a comprehensive immigration bill in his first year in office
- 2011 he directed agencies to focus immigration enforcement to more on criminals
 - “prosecutorial discretion,” a policy shift allowing federal immigration agents to focus on higher priority cases
- June 2012 he announced DACA as a class for certain undocumented young people to be granted Deferred Action to be able to stay and legally work



A TIMELINE OF PRESIDENT OBAMA'S ACTION ON IMMIGRATION

- November 20, 2014 President Obama announced a series of executive actions including such initiatives as:
 - Expanding the population eligible for the Deferred Action for Childhood Arrivals (DACA);
 - Created a new program called : Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA); and
 - Mandated that the immigration service Modernize, improve and clarify the immigrant and nonimmigrant visa programs to grow our economy and create jobs.



A TIMELINE OF PRESIDENT OBAMA'S ACTION ON IMMIGRATION

Today:

- Certain H-4 dependent spouses can begin filing for work authorization on May 26, 2014
- A Lawsuit has delayed the proposed expanded DACA and DAPA programs
- We are awaiting necessary guidance and regulations from the immigration service regarding the revised programs for economic growth



GOAL: MODERNIZE OUR IMMIGRATION SYSTEM

- Reduce fraud
- Reduce burdens on employers and families
- Reduce government costs
- Unclog immigration courts
 - Focus on deportation of priority cases (criminals)
- Eliminate redundant steps



EXISTING VS. EXPANDED DACA

- Childhood arrivals
- In school, graduated from high school or GED, or was honorably discharged from armed services
- Ineligible if: felon; significant or more than three misdemeanors; public threat, broke residence



EXISTING VS. EXPANDED DACA

- In US before age 16, continuously residing since June 2007; under 31 years old on June 15, 2012
Expanded: Under 31 age requirement removed
- Had no lawful status on June 15, 2012
Expanded: This date is subject to change
- Period of authorized stay and EAD issued for 2 years
Expanded: Increased period to 3 years



PROS & CONS OF EXPANDED DACA

Pros:

- Removes threat of deportation and
- Permits work and travel
- For a period of three years

Cons:

- Not an actual status, state of limbo until comprehensive immigration reform or the executive action overhauled
- If program is overhauled participants may be required to leave the U.S.
- Travel may not be advisable in certain cases



DAPA QUICK SUMMARY

- Similar to DACA for Parent of a USC or LPR who was born on or before Nov 20 2014
- Not an enforcement priority (unless the individuals are otherwise considered a threat to society or has more than one misdemeanors)
- Similar DACA benefits for 3 years
- Note: Challenge to travel permission as it may create a path to citizenship



MODERNIZING AND IMPROVING THE IMMIGRANT AND NON-IMMIGRANT VISA PROGRAMS

Inventors, Researchers & Start up's:

- National Interest Waiver (NIW) rules for inventors, researchers & founders of start-ups
 - Ensure high-skilled immigrants, graduates, and entrepreneurs stay and enhance our economy
- Create a program to grant Parole to individuals who may not yet qualify for the NIW category
 - Already have substantial US investor financing
 - Hold the promise of innovation and job creation



MODERNIZING AND IMPROVING THE IMMIGRANT AND NON-IMMIGRANT VISA PROGRAMS

Dept. of Labor & the Labor Certification Process:

DOL instructed to take regulatory action to modernize the labor market test

- Update requirements of employers sponsoring foreign workers for immigrant visas
- Ensure that American workers are protected.



MODERNIZING AND IMPROVING THE IMMIGRANT AND NON-IMMIGRANT VISA PROGRAMS

Dept. of Labor & the Labor Certification Process: Employer Wish list?

- Overall processing time improvement
- Time limit to avoid need to repost ads
- Expedite option
- Harmless error allowance
- Minor variance
- US worker protection / modern customs (Certified Mail)



MODERNIZING AND IMPROVING THE IMMIGRANT AND NON-IMMIGRANT VISA PROGRAMS

Dept. of State & Visa Numbers (Green Cards):

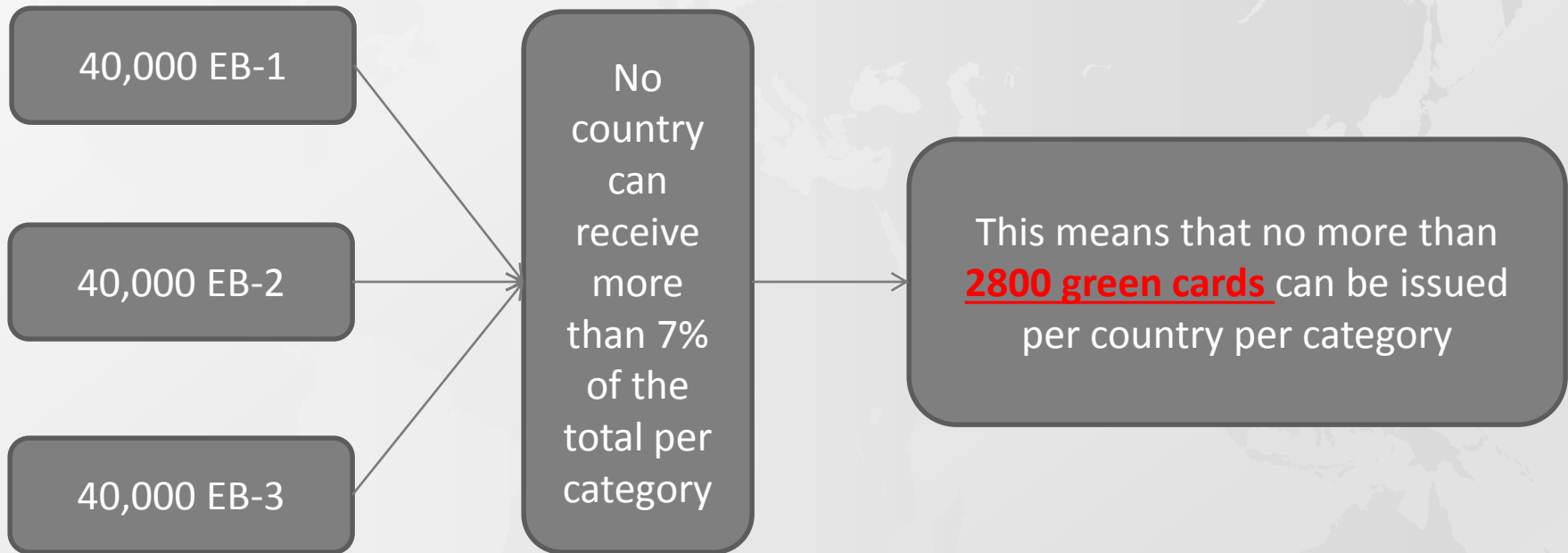
USCIS & DOS to collaborate:

- Ensure that all immigrant visas authorized by Congress are issued to eligible individuals when there is sufficient demand for such visas
- Simplify the Visa Bulletin system, to allow for reliable determinations of visa availability
- Possibly stop counting family members towards visa numbers



140k EB VISAS ARE ISSUED IN A YEAR

20,000 visa numbers reserved for Employment Based 4th and 5th Categories



The overall number of 140k visa numbers are not changing but we may see some changes in the methodology



VISA BULLETIN

MARCH 2015

Employment - Based	All Chargeability Areas Except Those Listed	CHINA - mainland born	INDIA	MEXICO	PHILIPPINES
1st	C	C	C	C	C
2nd	C	01SEP10	01JAN07	C	C
3rd	01JUN14	22OCT11	01JAN04	01JUN14	01JUN14
Other Workers	01JUN14	15AUG05	01JAN04	01JUN14	01JUN14



MODERNIZING AND IMPROVING THE IMMIGRANT AND NON-IMMIGRANT VISA PROGRAMS

USCIS: Pending or Approved I-140's:

- Provide clarity and remove restrictions on natural career progression and general mobility
- Focus on skilled workers facing lengthy visa number wait times
 - Easier transitions for high-skilled workers could be good/bad for companies attracting/ retaining workers
 - Guidance for when an employee is promoted beyond the sponsored position



MODERNIZING AND IMPROVING THE IMMIGRANT AND NON-IMMIGRANT VISA PROGRAMS

ICE / USCIS: Benefits to F-1 Students:

Expand and extend the use of optional practical training (OPT) for foreign students, consistent with existing law.

- Granting certain foreign students more time to work in the United States
- Require stronger ties between OPT students and their colleges and universities following graduation
- Pending litigation that may stall this policy:
Washington Alliance of Technology Workers vs. DHS

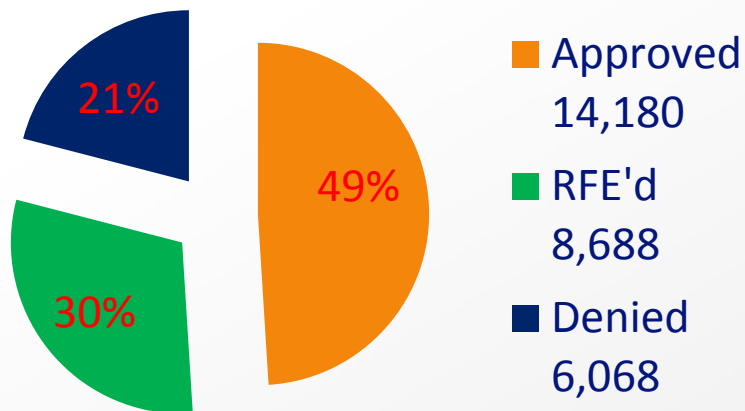


L-1B RFE NIGHTMARE

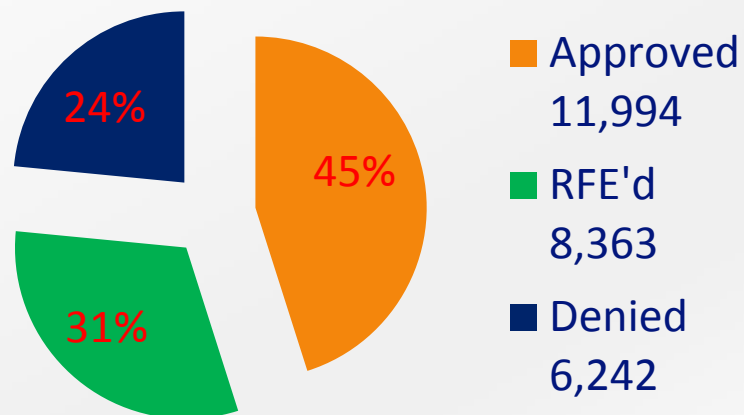
Request For (additional) Evidence:

Chart Courtesy of the American Immigration Lawyers Association

Applications Filed in Fiscal Year 2012



Applications Filed in Fiscal Year 2013





MODERNIZING AND IMPROVING THE IMMIGRANT AND NON-IMMIGRANT VISA PROGRAMS

USCIS: L-1B

Bring greater clarity and integrity to the L-1B “specialized knowledge” program.

- Improve consistency in adjudications, and
- Enhance companies’ confidence in the program



WORK AUTHORIZATION FOR CERTAIN H-4 DEPENDENT SPOUSES

Effective May 26, 2015 eligibility for employment authorization is extended to certain H-4 spouses:

- Must be the spouse of the principal H-1B holder
- The principal H-1B holder must either have:
 - An approved I-140, or
 - Seventh year extension of H-1B status based on the Labor Certification pending for more than one year.



WORK AUTHORIZATION FOR CERTAIN H-4 DEPENDENT SPOUSES

- EAD may be issued for 2 years or until expiry of H status whichever is earlier
 - Remote possibility of a 3 year EAD
- Children not eligible for EAD
- The cap for H-1B visas remains at 65,000 & an additional 20,000 for US advanced degrees
- H-1B dependents with EAD will not be counted towards the H-1B cap



WHAT COULD THIS MEAN?

For Employers:

- An increased supply of technologically sophisticated, well-educated employees
- Potential green-card like benefits for high skilled workers waiting for their green-card
- Potential for simplified transfer of previously sponsored employees