

## What the President's Executive Action on Immigration Means to Your Business and Employees

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### M&E Immigration Law Alert

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The President's Immigration Accountability Executive Action holds the promise of major improvements to the ability of foreign national talent and their families to enter, work, and remain in this country while going through the seemingly endless process of obtaining lawful permanent resident status. A summary of key provisions that should be of interest to both employers and employees follows.

**Portability for high-skilled workers awaiting LPR status.** Employees with approved employment-based I-140 petitions often wait years for their immigrant visa to become "current" or available so that they and their family members can complete the process of obtaining lawful permanent residence. Regulatory changes will soon allow these workers to change jobs more easily so that they are not "on hold" professionally for lengthy and unpredictable periods of time.

**Work authorization for spouses of foreign nationals in the permanent residence process.** DHS will finalize rules giving certain H-1B spouses employment authorization so that families waiting for extended periods to adjust status in the United States will not be solely dependent on one income.

**Enhancing options for foreign entrepreneurs.** DHS will offer viable immigration options for foreign entrepreneurs who meet certain criteria for creating jobs, attracting investment, and generating revenue in the U.S.

**Strengthening and extending on-the-job training for STEM graduates of U.S universities.** In order to improve the ability of foreign students studying science, technology, engineering, and mathematics to remain in the country in a work-authorized status without being totally dependent on the random selection of the H-1B lottery, DHS will propose changes to expand and extend the use of the existing Optional Practical Training (OPT/work authorization) program.

**Clarity on the L-1B visa.** DHS will clarify its guidance on temporary L-1B visas for foreign workers who transfer from a company's foreign office to its U.S. office. This should be of particular interest to employers who rely on the L-1B classification to transfer employees with specialized knowledge into the U.S. from India.

**DOL will modernize the labor market test.** After years of forcing employers to adhere to an antiquated system of recruitment that has no relation to industry recruitment practices (including costly print advertisements), the DOL will modernize recruitment and application requirements for its 10-year-old PERM program. Among those issues the DOL will examine are the possibility of premium processing for PERM applications, a critical benefit where a foreign national is running out of time on a nonimmigrant visa; modernizing recruitment requirements; and options for identifying labor force occupational shortages to align recruitment requirements accordingly.

**Allocation of immigrant visas (green cards) based on demand.** Depending upon country of origin and job requirements, many foreign nationals (particularly those from India and China) wait years to complete the process of obtaining lawful permanent residence. During this period, employers are typically responsible for the cost of renewing temporary work visas and work authorization documents. The Department of State is now charged with developing a method to allocate immigrant visas (green cards) based on demand, which will hopefully reduce backlogs and employer costs significantly.

Timing of these changes will depend upon the issuance of necessary guidance and regulations and may take upwards of a year or more to become effective. McCarter's immigration practice will continue to provide updates as information becomes available.