

# Business Immigration Reporter

Vol. 1 - Issue 1

January 2015

## Immigration Executive Action and its Impact on Business Immigration

On November 20, 2014, the President announced deferred action on immigration enforcement, which will potentially halt removal proceedings against nearly five million undocumented immigrants and grant them work authorization. While most of the media hype centers around the political quarrels about amnesty and border security, little reporting has surfaced how, if at all, executive action will benefit business immigration.



Christian G.A. Zeller, Esq.

In a White House briefing prior to the President's executive action announcement, the following could be gleaned in terms of potential business immigration changes:



### Worksite Enforcement:

Currently Immigration & Customs Enforcement (ICE) is charged with worksite enforcement, e.g. I-9 employment eligibility verification audits. Moving forward, the Department of Labor (DOL) may be tasked with coordinating worksite enforcement activities among agencies.



### Foreign Entrepreneurs:

Policy guidance is expected to emerge concerning entrepreneurs, researchers, inventors, and founders to become eligible for national interest waivers. National interest waiver beneficiaries are exempt from having had a labor certification filed for their benefit for it is presumed that their work and expertise prospectively benefits the national interest.

### Consultations/Inquiries

es

CORPORATE OFFICE

TAMPA

CALL

813-221-1366

OR

[EMail](#)

## **Branch Offices**

At this time the USCIS deems the following to be in the national interest: (1) improvement to the U.S. economy; (2) improvement of working conditions for U.S. workers; (3) improving education and training of U.S. children and under qualified workers; (4) affordable housing for the poor, young, and aged; (5) improvement to the environment which leads to more productive use of national resources; and (6) if an interested government agency requests the foreign national's services.

Immigration Help Center  
Tampa, Florida  
813-888-6700

[MAP](#)

Orlando, Florida  
407-857-1300

[MAP](#)

Albuquerque, New Mexico  
505-266-8739

[MAP](#)

El Paso, Texas  
915-533-6699

[MAP](#)

## **AC-21:**

AC-21 is the American Competiveness Act of the Twenty-First Century. The benefits are plenty, one of which is that a person who has a pending adjustment of status which flows from an employment-based petition, may change his/her job and move to a different employer, including self-employment, if his/her adjustment of status application has been pending for at least 180 days and if the new job is in the "same or similar" position. The new guidance is to clarify what "same or similar" means.

## **L-1b:**

L-1b visa holders are intra-company transferees who are vested with specialized knowledge. Over the years the USCIS' definition of what is specialized knowledge has become increasingly warped and restrictive. New guidance defining specialized knowledge is expected.

## **H-4 Employment Authorization:**

H-4 visa holders are spouses and unmarried children under 21 of H-1b, H-1b1, H-2b, and H-3 visa holders. At this time H-4 visa holders are not allowed to engage in gainful employment. Regulations are to be forthcoming to allow for H-4 employment authorization, but at this time it is unclear whether both spouses and children or spouse only will benefit.

## **OPT for STEM Graduates:**

STEM (science, technology, engineering, math) graduates already enjoy expanded optional practical training work authorization and under the President's executive action proposal those benefits will be further strengthened and expanded.

## **PERM:**

Program Electronic Review Management or better known as the labor certification process will finally undergo rulemaking. PERM was implemented on May 28, 2005 and the DOL never wrote any rules or regulations; rather, it has governed the process by way of FAQ releases.

## **Green Card (adjustment of status) Pre-Registration:**

Applicants with approved employment-based applications who are stuck in the visa number quota backlog will be able to register for adjustment of status. While they will not be able to adjust their status to that of legal permanent resident until such date and time that their visa number does become current, they will be able to avail themselves of the benefits of a pending adjustment – such as travel and work authorization. This will potentially benefit more than 400,000 people.

## **E-Verify: Agencies Are Teaming Up**

U.S. law requires companies to employ only individuals who may legally work in the United States – either U.S. citizens, or foreign citizens who have the necessary authorization. E-Verify is an Internet-based system that allows businesses to determine the eligibility of their employees to work in the United States. Participation in E-Verify is voluntary, but participant companies must adhere to E-Verify rules.

Beware! The agencies responsible for administering our immigration laws are talking to one another and they have begun sharing E-Verify information. Specifically, they are monitoring your E-Verify use and report anomalies for investigation. Companies are now exposed to increased scrutiny by USCIS' E-Verify Monitoring & Compliance Branch (M&C), which in its own words refers instances of possible fraud, discrimination, and illegal or unauthorized use of the system to other federal agencies such as Immigration & Customs Enforcement (ICE), the Department of Justice (DOJ), and the Office of Special Counsel (OSC).

Recent settlements reported by the OSC make it clear that this referral process is not a mere proposal enumerated in memoranda between the agencies, but that it actually does take place. To read the full Memorandum of Understanding and Agreement between the agencies go to

<http://www.uscis.gov/sites/default/files/USCIS/Verification/E-Verify/E-Verify/USCIS-ICE-E-Verify-MOA.pdf>

## **Business Immigration Case Law**

***U.S. v. Leed Construction*, OCAHO Dec. 18, 2014, Case Number 13A00111**

The Office of the Chief Administrative Hearing Officer (OCAHO) ordered a reduction of the fine concerning I-9 violations despite suspicious circumstances because penalties may only be assessed based on presented evidence. In addition, because the company is no longer in business the fine would have no deterrent effect.

***U.S. v. Keegan Variety LLC*, OCAHO Dec. 19, 2014, Case Number 14A00023**

The Chief Administrative Hearing Officer reduced the fine for failing to complete two Forms I-9 timely, from \$1,777.00 to \$500.00 because the company had one part-time and one full-time employee, both of whom are family members.