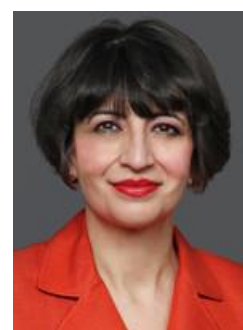


What Does Trump's Raise Act Support Mean For Employers?

Law360, New York (August 8, 2017, 12:24 PM EDT) -- On Aug. 2, 2017, President Donald Trump announced his strong endorsement of the Reforming American Immigration for a Strong Economy Act (S.1720), a bill introduced by Sens. Tom Cotton, R-Ark., and David Perdue, R-Ga., that would slash annual overall immigration by half over 10 years. The Raise Act seeks to implement extensive reform to the U.S. immigrant visa system, including replacing the current classification-based system with a merit-based points system.

Specifically, the Raise Act would:

- Replace the employment-based immigrant visa system of the past 27 years with a merit-based selection process under which prospective immigrants would earn points based on education, English-language ability, high-paying job offers, age, extraordinary achievement, and high-value investment.
- Retain immigration preferences for the spouses and minor children of U.S. citizens and legal permanent residents while eliminating preferences for certain categories of extended and adult family members.
- Eliminate the Diversity Visa lottery program, which currently provides 50,000 green cards annually to citizens of countries historically underrepresented in the annual flow of immigrants to the United States.
- Place an annual limit of 50,000 on the number of refugees eligible to become permanent residents.



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While the Raise Act is not currently expected to be approved by Congress, the administration's endorsement of the bill signals transformative changes for employer sponsorship of foreign workers. Below we discuss the most significant changes for employers.

1. Points-Based System

The employment-based immigration system would be replaced by a points-based system.

The most significant change for U.S. employers that sponsor employees for permanent residence would be the replacement of the current visa preference categories (aliens of extraordinary ability, outstanding researchers, multinational managers and executives, professional/skilled/other workers, advanced degree holders) with a merit-based points system, modeled on systems adopted in Australia and Canada. Under the Raise Act:

- Applicants would earn points based on education, English-language ability, high-paying job offers, age, record of extraordinary achievement, and entrepreneurial initiative.
- Applicants would be required to reach a 30-point threshold, out of a possible 102 points, to be eligible to apply for an immigrant visa.
- Eligible applicants would enter a pool of potential immigrants from which U.S. Citizenship and Immigration Services twice a year would invite the candidates with the highest scores to file full applications and undergo security vetting. Candidates not selected from the pool after one year would have to reapply for readmission to the pool.
- Although a job offer is not required, applicants with job offers would have to include an affidavit by their prospective employer/sponsor listing the salary offered and attesting that the job offered is a new or vacant position and that no U.S. employee is being displaced. The employer also would have to affirm that it would provide the applicant with health insurance, or the applicant would have to post a bond to be used to purchase the requisite health insurance.
- Married applicants would be credited with a percentage of the points the spouse would have earned if he or she were applying for a points-based visa.
- The age for dependent children to be eligible for a green card would be reduced from 21 to 18 years.
- Potential immigrants who were awaiting entry under family preference categories eliminated by the Raise Act but who do not qualify under the bill's grandfather provision would be allotted points if they apply through the points system.
- The annual allotment of points-based visas would be 140,000, which is the same as the current annual allotment of employment-based visas.

At the end of this page, you will find a chart of the Raise Act's clear winners, clear losers and other applicants as well as a graph of the points available to visa applicants.

2. Unpredictability

Because of the inherent unpredictability of selection, employers who wait to sponsor employees for permanent residency could lose valuable talent.

The Raise Act's points-based system would set a 30-point minimum threshold for qualification for an immigrant visa, and United States Citizenship and Immigration Services would offer immigrant visas twice yearly to the highest-scoring applicants. While specific details regarding visa application

procedures remain unsettled, the legislation states that applicants not selected after 12 months would be required to reapply.

Because applicants are not guaranteed selection, employers should consider sponsoring employees for immigrant visas as soon as possible upon implementation of the Raise Act. Early sponsorship would ensure the applicants have the most possible opportunities for selection for an immigrant visa in the event of oversubscription, which is highly likely.

In the case of oversubscription and ties, the Raise Act would provide tiebreakers to determine who would be offered opportunities to apply for immigrant visas. Tie-breaking factors would include:

- Level of education completed;
- English language proficiency test rankings; and
- Age, with applicants who are nearest to their 25th birthday ranked higher.

Under the Raise Act points system, applicants would be ranked based on their scores, with 140,000 immigrant visas issued annually. While the volume of immigrant visas would remain the same as under the current system, applicants who are not selected in the annual pool would not be guaranteed selection in any future year. Instead, they would consistently attempt to be included based on the highest number of points and/or the tiebreaker evaluation of the agency.

In light of this uncertainty, employers who wait to sponsor valuable employees may lose them, if and when this system is implemented.

3. Potential Changes to the Annual H-1B Process

The Raise Act provides an illuminating preview of how the Trump administration is likely to change the annual H-1B selection process.

The Trump administration has emphasized a points-based system as a method of ensuring that the United States welcomes only the “best and brightest” foreign workers, and the Raise Act’s immigrant visa system accordingly could be adapted by the administration in furtherance of H-1B (specialty occupation) visa reform. In that instance, points-based selection would replace the current annual H-1B visa lottery, during which H-1B petitions are selected at random for processing.

The Raise Act echoes the president’s April 18, 2017, executive order titled “Buy American and Hire American” by which the president gave direction to his cabinet to “suggest reforms to help ensure that H-1B visas are awarded to the most-skilled or highest-paid petition beneficiaries.”

4. Awarding Points

The Raise Act’s age bias favors 25-to-30-year-olds, but education, career achievements and compensation level would provide the highest number of points.

The Raise Act’s points-based system would award points based on the applicant’s age, with the most

possible points — 10 — awarded to early-career professionals between the ages of 26 and 30 and one of the three tie-breaking factors tied to the age of 25. Points would decline after this age bracket, with no points awarded for applicants 51 and older. But the larger proportion of the possible points would stem from applicants’ professional and educational experience.

For instance, professional experience, measured in the form of annual income, would provide applicants with up to an additional 13 points for those making at least 300 percent of the state median household income. In addition, entrepreneurs investing at least \$1.8 million could qualify for 12 points on the Raise Act scale.

Professionals would also benefit from points based upon educational experience — the level of degree attained, degree major and location. Applicants with U.S. professional and doctoral degrees, for instance, would be awarded up to 13 points.

On the Horizon

- The prospects for serious consideration of the bill are slim in this congressional session — an earlier version of the bill, introduced in February 2017, failed to gain traction.
- Nonetheless, the president’s strong endorsement of such a fundamental change to our legacy employment-based immigration process portends his willingness to support significant changes to other areas, including H-1B temporary visas.

Appendix: Groups of Potential Visa Applicants Who Would Be Impacted by the RAISE Act

CLEAR WINNERS	ON THE BUBBLE	CLEAR LOSERS
AGE		
People aged 22-35. More points to people aged 22-35, with the most points assigned to people aged 26-30.	People over age 50. No “age” points for people over 50, so they have to earn points through other avenues.	
AWARD		
Extraordinary achievers. Windfall points but only for winners of the Nobel Prize or comparable (25) or an Olympic medal or comparable (15).		
COMPENSATION		
Highly compensated people. Most points to people earning at least 300% of the state median household income.		
DEGREE		
Highly educated people. Most points to professional and doctorate-level degrees. US degree holders. US degree holders favored over foreign degree holders for points. STEM degree holders. Extra points to STEM degree holders.	Foreign degree holders. US degree holders get the advantage of more points.	Non-STEM graduate degree holders (except MD, JD, and MBA). No extra points awarded for these degrees. People with a high school degree or less. Only 1 point for high school graduates and no points for people with less than a high school degree.
DIVERSITY VISA		
		Diversity Visa applicants. Eliminates the award of 50,000 immigrant visas annually to “DV” applicants from countries with low rates of immigration to the US.
ENGLISH		
English speakers. Extra points to those with the highest scores on English aptitude tests.		Non-English speakers. No points for people scoring below the 50 th percentile on English aptitude tests.
FAMILY		
Dependent children below age 18. Only those below age 18 qualify as immediate relatives.		Dependent children aged 18-20. Eliminates eligibility for immigrant visas on this basis. Parents of US citizens. Eliminates eligibility for immigrant visas on this basis; dependent parents would be eligible for nonimmigrant visas. Unmarried adult children of US citizens. Eliminates eligibility for immigrant visas on this basis. Siblings of adult US citizens. Eliminates eligibility for immigrant visas on this basis.
INVESTMENT		
Super investors. Up to 12 points awarded for investments of \$1.8 million or more.		
REFUGEE		
	Refugees. Caps the number of refugees granted immigrant visas to 50,000 per year.	

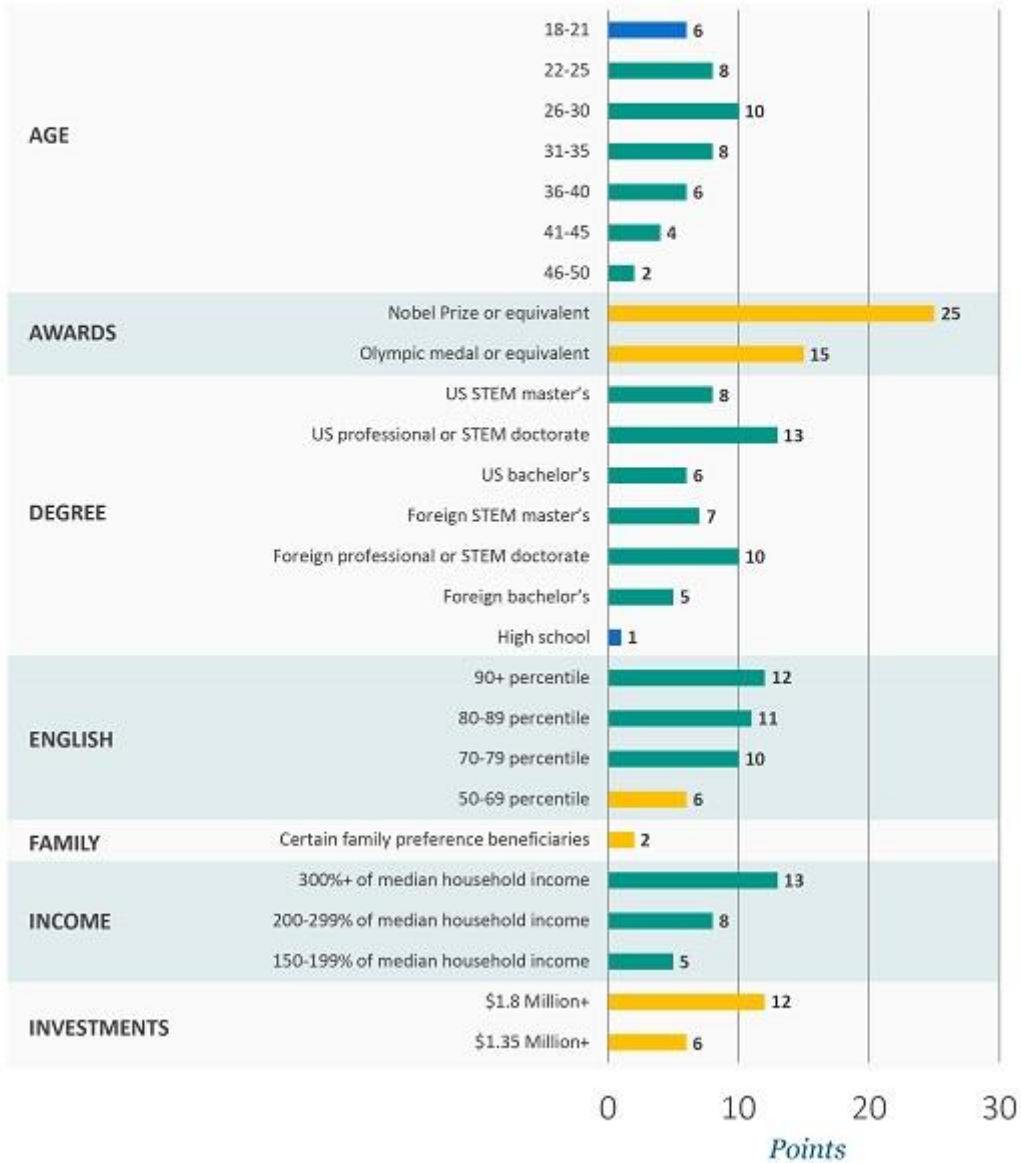
RAISE Act

Points Available to Visa Applicants

KEY

- Frequently applicable
- Sometimes applicable
- Rare

Applicant Factors



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