

Trump's Immigration Priorities: What Employers Should Know

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The Trump administration released on Oct. 8, 2017, a list of three immigration policy objectives to:

1. “ensure safe and lawful admissions;
2. defend the safety and security of [the United States]; and
3. protect American workers and taxpayers.”



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The administration indicated in its statement that it is “ready to work with Congress” to meet these immigration policy priorities.

The three main policy objectives — border security, interior enforcement and a merit-based immigration system — align with earlier White House pronouncements, including the “Buy American, Hire American” executive order and the statements accompanying its multiple “travel bans.”

Two aspects of these policy objectives merit close evaluation by employers: an emphasis on heightened visa fraud detection capabilities and the development of a points-based system to measure eligibility of foreign nationals for U.S. permanent residence. We note that there is no reference to the Deferred Action for Childhood Arrivals (DACA) program, which the administration is ending. (Please see our DACA Legal Update.)



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Measures to Enhance Visa Fraud Detection

The Trump administration’s policy priorities identify multiple avenues of enhancing enforcement of U.S. immigration laws, including expansion of the U.S. Department of State’s authority to collect and use fraud prevention and detection fees to combat visa fraud and enhanced funding of the Visa Security Program, especially at high-risk consular posts. In particular, the administration proposes strengthening the ability of the Department of State to detect and prevent fraud in the following ways:

- **Expand the Department of State’s authority to use fraud prevention and detection fees for programs and activities to combat all classes of visa fraud within the United States and abroad.** In contrast, current law limits the use of the fraud prevention and detection account funds to preventing and detecting fraud by applicants for H-1, H-2 and L nonimmigrant visas.
- **Ensure funding for the Visa Security Program and facilitate its expansion to all high-risk posts.** The “Visa Security Program,” which Homeland Security Investigations (HSI) International Operations coordinates to conduct visa security activities,[1] has suffered from funding challenges, leading to agency-expressed concerns that the program has not expanded to more visa-issuing posts.[2]
- **Increase the Border Crossing Card (BCC) fee.** The Department of State currently charges a fee of \$160 for the issuance of the Mexican BCC. The BCC is used by eligible Mexican nationals in lieu of a B-1/B-2 visa.
- **Grant the Department of State the authority to apply the passport security surcharge to the costs of protecting U.S. citizens and their interests overseas and to include those costs when adjusting the surcharge.** The U.S. Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act, 2005 (P.L. 108-447) authorizes the Department of State to charge and retain surcharges related to consular services in support of enhanced border security. These fees finance a significant portion of the Department’s Border Security Program.
- **Strengthen laws prohibiting civil and criminal immigration fraud and encourage the use of advanced analytics to proactively detect fraud in immigration benefit applications.** A number of civil and criminal immigration fraud measures were included in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). The administration would like to see those authorities expanded.

The prioritization of visa fraud detection is a critical point for employers and their foreign national populations, as employers and employees should expect longer queues and increased security checks for visa benefits. The Trump administration’s prioritization of visa fraud detection and prevention aligns with recent changes announced by the administration, including the phase-in of in-person interviews for all employment-based applicants for permanent residence, including dependent family members, effective on Oct. 1, 2017, for applications filed on or after March 6, 2017. Visa applicants may also find that consular officers will question their eligibility for a visa benefit even when an underlying visa petition has already been granted by the U.S. Department of Homeland Security (e.g., for H-1B and L-1 benefits).

Development of a Points-Based Immigration System

The Trump administration’s prioritization of a points-based immigration system for employers aligns with the president’s endorsement of the Reforming American Immigration for a Strong Economy (RAISE) Act, which was introduced by Sens. Tom Cotton, R-Ark., and David Perdue, R-Ga., in August 2017. 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. (Please see our RAISE Act Legal Update.)

Implementation of a points-based immigration system would require congressional action and is

unlikely to affect petitions and related submission filed under current U.S. immigration laws.

Do the Announced Priorities Require Formal Rulemaking and/or Congressional Action?

Below, please find a chart listing each priority provided by the administration, noting whether the priority requires administrative and/or congressional action to be addressed.

Administrative Priority	Requires Formal Rulemaking?	Requires Congressional Action?
BORDER SECURITY		
Fund and complete construction of a southern border wall.		X
Authorize DHS to raise and collect fees from visa services and border crossings to fund border security and enforcement activities.		X
Ensure the safe and expeditious return of Unaccompanied Alien Children (UAC) and family units.	X	
End abuse of the asylum system by tightening standards, imposing penalties for fraud, and ensuring detention while claims are verified.	Reform of the asylum system would require congressional action; the revised detention policies would require congressional appropriation and formal rulemaking; the imposition of penalties for fraud likely would not require formal rulemaking or congressional action, but would require prioritization by the Department of Justice.	
Remove illegal border crossers quickly by hiring an additional 370 immigration judges and 1,000 ICE attorneys.		X
Discourage illegal reentry by enhancing penalties and expanding categories of inadmissibility.		X

Expand expedited removal by expanding the grounds for removability, expanding the categories of individuals subject to expedited removal, and ensuring that only individuals with meritorious valid claims of persecution can avoid expedited removal.		X
Improve infrastructure and security along the northern border.	Unclear. The administration has not clarified its specific objectives to improve infrastructure along the northern border.	
INTERIOR ENFORCEMENT		
Revise sanctuary city policies by restricting these cities' ability to receive certain federal grants and awards.		X
Authorize and incentivize states and localities to help enforce federal immigration laws.		X
Strengthen law enforcement by hiring 10,000 more ICE officers and 300 federal prosecutors.		X
End visa overstays by establishing reforms to ensure their swift removal.		X
Stop catch-and-release by correcting judicial actions that prevent ICE from keeping dangerous individuals in custody pending removal and by expanding the criteria for expedited removal.		X
Prevent gang members from receiving immigration benefits.		X
Protect US workers by requiring E-Verify and strengthening laws to stop employment discrimination against US workers.		X
Improve visa security by expanding the Department of State's authority to combat visa fraud, ensuring funding of the Visa Security System, and expanding it to high-risk consular posts.		X

MERIT-BASED IMMIGRATION SYSTEM		
End extended-family chain migration by limiting family-based green cards to spouses and minor children.		X
Establish a points-based system for green cards to protect US workers and taxpayers.		X

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[1] These include examining visa applications for fraud, initiating investigations, coordinating with law enforcement partners, and providing law enforcement training and advice to Department of State consulates.

[2] In September 2014, the Department of Homeland Security inspector general reported that: “[T]o date, ICE has established only 20 visa security units. Congressional leaders have repeatedly expressed concerns that the program has not expanded to more visa-issuing posts. ICE’s responses to these concerns have stressed funding challenges, a limited number of trained special agents, and Department of State challenges to make space and provide support for DHS’ overseas presence.”