A First Look at Donald Trump's Possible Employment-Based Immigration Policy and its Impact on U.S. Employers

Throughout his campaign, President-elect Donald Trump focused mainly on undocumented workers, and not on employment-based immigration. He has offered only a vaguely drafted policy statement regarding his proposed changes to U.S. immigration law, so only time will tell how his policies will eventually take shape. Following is a summary of some of Mr. Trump’s key policy proposals and how these policies could affect U.S. employers.

PLEASE NOTE, THESE POLICIES ARE MERELY PART OF MR. TRUMP’S CAMPAIGN PLATFORM AND MAY NOT REFLECT FUTURE POLICIES.

Changes to H-1B Program

Mr. Trump has suggested two primary changes to the H-1B visa program - one of the most popular temporary work visa options, which provides temporary work authorization for bachelor’s level employment.

First, Mr. Trump wants to increase the H-1B prevailing wage requirement. Under current law, employers must pay H-1B workers at least the ‘prevailing wage,’ which is the average wage for a given occupation and experience level within a particular geographic region. Employers must also pay H-1B workers at least as much as similarly qualified U.S. workers in the same job. By increasing the prevailing wage, Mr. Trump hopes employers will give “coveted entry-level jobs to the existing domestic pool of unemployed native and immigrant workers in the U.S., instead of flying in cheaper workers from overseas.”

Second, Mr. Trump wants employers to attempt to hire U.S. workers before they may hire a foreign worker on a temporary visa such as the H-1B. This is a common requirement when an employer wishes to sponsor a foreign worker for permanent residence, but is uncommon in the context of temporary work visas. If enacted, these changes would add additional hurdles for employers considering the H-1B visa program.

Pausing Green Card Issuance

In his immigration policy statement, Mr. Trump suggests “pausing” the issuance of new green cards to foreign workers abroad, so that “employers will have to hire from the domestic pool of unemployed immigrant and native workers.” On its face, this proposal would simply redirect available immigrant visas to foreign nationals already legally in the U.S. on other visas. For example, in 2014 (the most recent year from which data is available), 86% of employment-based green cards were issued to foreign nationals already working in the U.S. However, when combined with Mr. Trump’s proposed restrictions to the H-1B program, discussed above, and depending on how the policy was implemented, the result could be a long-term restriction on U.S. employment-based immigration. Note that on account of the policy statement’s casual nature, the intention may in fact be to pause green card issuance for all foreign nationals, both in and out of the U.S.

Nationwide E-Verify

Mr. Trump has proposed requiring all U.S. employers to participate in E-Verify, a currently voluntary online system that employers may use to verify their employees’ work authorization. Employers are required to verify work authorization for all employees in the U.S., but may do so using a paper form. Mr. Trump believes that requiring compliance through the online E-Verify system would cut down on document abuse and reduce reliance on undocumented workers.
Increased Risk of Deportation/Risk of Overstay

Mr. Trump has proposed tripling the number of officers and agents employed by Immigration and Customs Enforcement (ICE), the agency tasked with enforcing immigration laws within the U.S. This expansion may increase ICE’s capacity to deport undocumented foreign nationals. Mr. Trump has also proposed enhanced criminal penalties for any foreign national who remains in the U.S. beyond the expiration of their temporary status.

End Birthright Citizenship

Mr. Trump has proposed an end to birthright citizenship, which is the longstanding practice of conferring U.S. citizenship to anyone born in the U.S. Ending birthright citizenship would likely require amending the U.S. Constitution. The change would have a profound impact on foreign national families living in the U.S.

NAFTA Work Authorization

In his immigration policy statement, Mr. Trump proposed increasing fees on all North American Free Trade Agreement (NAFTA) worker visas issued to Mexican nationals.

Further, while outside the scope of his immigration policy, Mr. Trump stated that he would renegotiate or possibly withdraw from NAFTA altogether. If Trump withdrew the U.S. from NAFTA (an act which the treaty’s terms appear to allow for), it would have the effect of eliminating certain work visa categories for Canadian and Mexican citizens established by NAFTA, such as the TN. Certain other work visa categories premised on NAFTA, such as the E Treaty Trader and Investor, could also be jeopardized.

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