

Mobility: immigration alert

January 2021

United States

President Biden's proposed US Citizenship Act

Executive summary

On 20 January 2021, the first day of the Biden administration, the President sent a comprehensive immigration reform bill to Congress known as the U.S. Citizenship Act of 2021 (the Act). The language of the bill has not been yet made public, but a fact sheet has been released by the administration.

Background

According to a White House press release, the Act is intended to "responsibly manage and secure our border, keep our families and communities safe, and better manage migration across the Hemisphere." The Act promises to: i) provide pathways to citizenship and strengthen labor protections; ii) prioritize smart border controls; and iii) address root causes of migration.

Impact on business immigration

If passed by Congress, the Act will have a significant impact on business immigration. Notably, the Act will:

- ▶ Undertake to reduce lengthy processing times and clear the backlogs experienced in many employment-based visa categories
- ▶ Recapture numerically limited visas from previous years that went unused
- ▶ Provide work permits to dependents of H-1B visa holders, including spouses and perhaps also children (the full extent of this provision is not yet clear). Also, children will be prevented from "aging out" of their visa status at age 21
- ▶ Eliminate the "3 year ban" and "10 year ban" which bar individuals who have accrued a certain amount of unlawful presence from being admitted to the U.S.
- ▶ Eradicate certain obstacles to obtaining employment-based green cards. The per-country cap for employment-based green cards would be eliminated. Green cards would also be more readily accessible for lower-wage workers. The Act would give the Department of Homeland Security (DHS) the authority to adjust green card issuance based on real time economic conditions
- ▶ Make it easier for foreign nationals with an advanced STEM degree from a U.S. university to remain in the U.S.
- ▶ Incentivize higher wages for highly skilled visa holders to prevent unfair competition with U.S. workers
- ▶ Require the DHS and the Department of Labor establish a commission to make recommendations for improving the employment verification process

What this means

The Democrats have simple majorities in both the Senate and the House of Representatives, meaning that there is an increased likelihood that this legislation could be introduced and passed by Congress.

The Act, if enacted, would likely eliminate certain obstacles to obtaining employment-based immigrant visas, meaning that they might be processed more quickly. For example, the Act is expected to clear employment-based immigrant visa backlogs, reduce lengthy wait times, often exceeding a decade, and recapture unused immigrant visas.

While there is no mention of the H-1B and L-1 work authorized visa categories, the *U.S. Citizenship Act of 2021* is likely just the first step of many in President Biden's plan for broad U.S. immigration reform. Should this bill be enacted into law, and while there is no known timeframe for that to occur, the information released to date gives a glimpse into the administration's immigration priorities.

While this is one of the most sweeping immigration reform proposals in thirty years, many immigration bills submitted to Congress in the last decade have not seen the light of day as established law. Although the Act is facing an uphill battle as it requires 60 votes to pass in the Senate, the changing administration and legislative circumstances provide a more favorable atmosphere for passage through Congress than in recent prior years.

EY Law will continue to monitor these developments. Should you have any questions, we encourage you to contact one of our US immigration professionals.

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