

Mobility: immigration alert

February 2021

United States

President Biden's executive order on review of Trump immigration policies and appointment of new department of Homeland Security Lead

Executive summary

On 02 February 2021, the President issued an Executive Order ("Order") instructing federal immigration agencies to conduct comprehensive reviews of various Trump-era immigration policies. The stated objective is to ensure that US laws and policies encourage full participation by immigrants in civic life, and that immigration benefits processes are delivered effectively and efficiently; that is, without the federal government being a source of fear or a barrier preventing immigrants from accessing lawfully available services and benefits. Alejandro N. Mayorkas was also confirmed as Secretary of Homeland Security, the first immigrant to hold the position.

Background

The "Executive Order on Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans" was released along with two other immigration-related directives focused on various humanitarian immigration programs.

The Order issued by President Joseph Biden tasks the Domestic Policy Council to coordinate agencies towards the administration's policy goals and instructs federal agencies to conduct a review of regulations, policies and guidance affecting legal immigration. The text of the order hails the contributions of legal immigration to American

society. It also reaffirms that the federal government will develop immigration strategies that welcome immigrants and promote integration and inclusion instead of one that are based on "fear and confusion".

The Order specifically instructs agencies to review their implementation of the public charge regulation, and to recommend steps to improve or revise policies, as well as seeking to streamline the naturalization process. Also included are mandates which instructs agencies to take steps to eliminate potential naturalization barriers and to reduce N-400 (naturalization) processing times.

A key separate takeaway is that in the Order, President Biden did not rescind the nonimmigrant visa issuance or the immigrant visa bans, which are scheduled to expire on 31 March 2021. There is no indication however that either of these will be renewed by the administration.

What this means

Under the directive, the Dept. of Homeland Security, along with the Dept. of Justice and Dept. of State, must review existing immigration regulations, policies and guidance that may be inconsistent with the Biden administration's priorities of promoting legal immigration and citizenship. The agencies must report to the President within 90 days on barriers that impede access to and adjudication of

immigration benefits and provide recommendations for removal of these barriers. The Order identifies the currently enjoined Trump-administration's USCIS "Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements" rule as an example of agency action that fails to promote access to the legal immigration system.

The proposed fee increases by the Trump-administration may have limited access to the immigration system due to the onerous fees being charged.

The public charge review: The Order requires that the agencies must also conduct an immediate review of their implementation of the public charge rule. Public charge regulations (PCR) are the subject of numerous lawsuits across the nation. The U.S. Supreme Court is currently considering whether to hear two separate challenges to the public charge rule. To this end, the agencies must report to the White House within 60 days on:

- ▶ Effect of PCR policies on the administration's principle of promoting and welcoming legal immigration
- ▶ The effect of PCR policy on the immigration system integrity and on public health
- ▶ Recommendations on revising policies as needed to increase communication and reduce fear and confusion

Naturalization review: Within 60 days of the Order, agencies must develop plans to promote and streamline the process of naturalizing to become a U.S. citizen. Agencies must address the following areas:

- ▶ Eliminate barriers in the naturalization process, and improve critical areas of the N-400 application process including fingerprinting, background checks, interviews, and civics and English language tests
- ▶ Substantially reduce naturalization processing times
- ▶ Review potential reduction of the N-400 fee to increase accessibility and restore a fee waiver process
- ▶ Creation of a "Naturalization Working Group" to promote naturalization and public awareness

Employers and foreign nationals alike are unlikely to see immediate changes as a result of the Order. However, significant policy changes leading to more immigration friendly process updates are possible based on the reviews to be conducted by the various agencies. This, of course, signals a sharp departure of the restrictionism of the preceding years.

Appointment of Alejandro Mayorkas to lead the Department of Homeland Security

The confirmation of Alejandro Mayorkas as the DHS Secretary on 02 February 2021 signals an intent by the new administration to restore the United States' reputation as a welcoming nation of immigrants. With this historic nomination of a Latino immigrant and expert in immigration law and policy, and as past Director of the U.S. Citizenship and Immigration Services (USCIS), Secretary Mayorkas brings years of critical leadership and a set of life experiences including his implementation of Deferred Action for Childhood Arrivals (DACA) and other relief programs. It is anticipated that Secretary Mayorkas will play a key role in countering the previous administration's immigration policies.

Recommended action: No further action is required at this time, and EY Law will continue to monitor and review future developments.

For questions, or if you wish to discuss this development further, please contact your EY Law LLP professional.

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