

# Mobility: immigration alert

February 2021

## United States

Summary of immigration actions the Biden administration has taken, as of 8 February 2021

### Executive summary

With thirteen immigration-focused Presidential actions and a sweeping immigration reform bill sitting with Congress, President Biden has taken quick steps to overturn a number of the Trump Administration's immigration policies within a few weeks of taking office.

### Background and impact

The Biden administration has expressed its goal for a safer, stronger, and more prosperous immigration system. The scope of the administration's immigration agenda is broad and comprehensive; from protecting Deferred Action for Childhood Arrivals (DACA) to addressing the backlog of nearly five million green card applicants. To start the lengthy process of reforming and modernizing the United States' immigration system, the administration has issued a number of directives, including the below, specifically related to business immigration:

- **Presidential proclamation on ending discriminatory bans on entry to the United States (issued on 20 January 2021)**

President Biden's Proclamation revoked President Trump's "travel ban" of foreign nationals in a number of visa categories, from Chad, Eritrea, Iran, Kyrgyzstan, Libya, Myanmar, Nigeria, North Korea, Somalia, Sudan, Syria, Tanzania, Venezuela, and Yemen. While a positive development for affected foreign

nationals, there will be continued difficulties in securing visas due to consular closures and travel restrictions caused by the pandemic. This Proclamation also abolished the "extreme vetting" practices seen in recent years on immigrant visas leading to increasing scrutiny, and instructed the State Department to review past adjudications, clear the backlog of cases in waiver processing, and restore fairness to the visa adjudication process at U.S. Consulates abroad.

- **Executive Order on promoting COVID-19 safety in domestic and international travel (issued on 21 January 2021)**

To further curb the spread of COVID-19 and per recommendations by the Centers for Disease Control and Prevention (CDC), the Surgeon General, and the National Institutes of Health, President Biden has increased safety restrictions on domestic and international travel. This includes a mask-wearing mandate in airplanes, trains, buses, ferries, other public transportation, and their hubs. International travelers arriving in the U.S. are required to produce proof of a negative COVID-19 test prior to entry administered within 72 hours of foreign departure and to comply with recommended self-quarantine guidance. Additional public health measures for both international and domestic travel are expected and may be announced shortly.



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- ▶ **Presidential proclamation extending the suspension of entry of foreign nationals physically present within the Schengen Area, the United Kingdom, Ireland, Brazil, and South Africa (issued on 25 January 2021)**  
President Biden extended the travel suspension of foreign nationals arriving from countries with high COVID-19 numbers and new variants, where an individual was present within 14 days prior to arrival. This includes arrivals from the European Schengen area, Brazil, Ireland, South Africa and the United Kingdom. The Proclamation does not apply to lawful permanent residents, non-citizen U.S. nationals, spouses of U.S. citizens or lawful permanent residents, and parents or siblings (under 21 years old) of U.S. citizens or lawful permanent residents under 21 years old. The suspended issuance of certain visas (including H-1B, H-2B, L-1, and J-1) also remains in effect.
- ▶ **Executive order on ensuring the future is made in All of America by All of America's workers (issued on 25 January 2021)**  
In an effort to bolster the U.S. economy, President Biden calls upon the government's federal financial assistance awards and federal procurements to maximize the purchase of goods, products, or materials produced in the U.S. to help American businesses and workers thrive. With limited immediate impact, the effect may appear significant within the coming months. The previous administration's "Buy American, Hire American" Executive Order was revoked. That order which discouraged the hiring of foreign workers in the U.S., resulted in increased barriers to work visa adjudications, as well as a reduced issuance of H-1B, L-1, and other visas.
- ▶ **Executive order on restoring faith in our legal immigration systems and strengthening integration and inclusion efforts for new Americans (issued on 2 February 2021)**  
The Biden administration has ordered a complete, top-to-bottom review of all recent immigration regulations, policies, and guidance, and specified an examination into the public charge inadmissibility rule (requiring those seeking an immigration benefit to submit additional proof of financial self-sufficiency) and a future streamlined naturalization process.

The Biden Administration has also issued a number of other immigration-focused directives:

- ▶ **Preserving and fortifying Deferred Action for Childhood Arrivals (DACA) (issued on 20 January 2021)**  
With over 700,000 individuals enrolled in DACA, the program has faced legal challenges since its inception, most recently targeted by the Trump administration for termination but ultimately upheld by the Supreme Court. President Biden has called on Congress to pass legislation and protect DACA recipients (known as "Dreamers") by not only permitting them to obtain temporary work permits but giving them a path to permanent legal status and U.S. citizenship.
- ▶ **Executive order on ensuring a lawful and accurate enumeration and apportionment pursuant to the decennial census (issued on 20 January 2021)**  
The Trump administration sought to exclude those not in lawful immigration status in the 2020 Census. The Census process is critical in the apportionment of congressional representatives and since the Fourteenth Amendment, has included the entire state population regardless of immigration status. Moving forward, the Census will return to include all inhabitants of each state.
- ▶ **Proclamation on the termination of emergency with respect to the southern border of the United States and redirection of funds diverted to border wall construction (issued on 20 January 2021)**  
President Biden called on the immediate halt to further construction of the U.S. border wall with Mexico and ended the "national emergency" declaration. The administration will pause the funding and investigate the contracting and funding methods associated with the wall.
- ▶ **Reinstating deferred enforced departure for Liberians (issued on 20 January 2021)**  
For the past 20 years, Liberians fleeing civil war have obtained temporary refuge in the United States under humanitarian programs. President Biden has extended this protection, specifically the Deferred Enforced Departure ("DED") through 30 June 2022, allowing Liberian beneficiaries under certain programs to obtain work authorization and an adjustment of status.
- ▶ **Executive order on the revision of civil immigration enforcement policies and priorities (issued on 20 January 2021)**  
President Trump's 2017 Executive Order on enhancing public safety in the interior of the United States removed federal grants given to cities that operated as "sanctuary jurisdictions" and resulted in a severe crackdown on illegal immigration (particularly those who have committed crimes and overstayed visas). While declared unconstitutional by the United States District Court for the Northern District of California the same year, President Biden's Order officially rescinds President's Trump's Order.
- ▶ **Executive order on the establishment of interagency task force on the reunification of families (issued on 2 February 2021)**  
This Order has established an Interagency Task Force on the Reunification of Families (Task Force) to reunite separated families through identifying children and providing appropriate support and services to the families.

The Task Force will also make recommendations to the President on how to prevent further separations of family members from occurring again. A President Trump executive order justifying the separation of children from families and the previous administration's "Zero-Tolerance Policy" has been revoked.

▶ **Executive order on creating a comprehensive regional framework to address the causes of migration, to manage migration throughout North and Central America, and to provide safe and orderly processing of asylum seekers at the United States border (issued on 2 February 2021)**

Through agency research and exploration of asylum and border policy changes, the Biden Administration aims to create a national strategy to address the root causes of the continued migration from Central America. The Biden administration announced a three-part plan: address the underlying causes of migration, collaborate with regional partners, and finally ensure that Central American refugees and asylum seekers have access to legal avenues to the US. The Prompt Asylum Claim Review (PACR) and Humanitarian Asylum Review Process (HARP) are now terminated, and the Secretary of State and Secretary of Homeland Security are working to expand lawful pathways for protections for individuals from El Salvador, Guatemala and Honduras.

▶ **Executive order on rebuilding and enhancing programs to resettle refugees and planning for the impact of climate change on migration (issued on 4 February 2021)**

With the goal of increasing refugee admissions to 125,000 within the first fiscal year of the Biden Administration, this Executive Order sets the groundwork to improve the security and transparency of the current U.S. Refugee Admissions Program. This includes a review of the Iraqi and Afghan Special Immigrant Visa programs and examining climate change's effect on forced migration and internal displacement. Under the Trump administration, authorized refugee admissions had been continually lowered, and was set at 15,000 in Fiscal Year 2021.

**Immigration bill pending with congress**

On 20 January 2021, President Biden sent a comprehensive immigration reform bill to Congress, known as the U.S. Citizenship Act of 2021 (the Act). The Act seeks to address several issues of the last few decades, including: a pathway to citizenship for undocumented foreign nationals, prioritizing smarter border control mechanisms, and addressing the root causes of migration.

The Act addresses the following:

- ▶ Creating a path for foreign nationals under DACA, Temporary Protected Status, and H-2A status (for agricultural workers) to apply for temporary legal status and then permanent residency after five years, and finally citizenship after three more years.
- ▶ Clear employment-based immigrant visa backlogs, reduce permanent resident wait times, recapture numerically limited unused visas from previous years, and eliminate per-country immigrant visa caps. 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.
- ▶ 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) and prevent their children from "aging out" of their visa status at age 21.
- ▶ Require Departments of Homeland Security and Labor to provide recommendations on how to protect foreign workers affected by labor violations and improve the employment eligibility verification process.
- ▶ Increase the annual number of available green cards under the Diversity Lottery Visa Program from 55,000 to 80,000.
- ▶ Eliminate the three-year and ten-year bar for individuals deemed unlawfully present in the US.
- ▶ Bar the current and future presidents from immigration bans discriminating on the basis of religion.
- ▶ Eliminate the one-year deadline for filing an asylum claim, increase the U-visa cap from 10,000 to 30,000 and implement other humanitarian program reforms.

If passed, this would present the most sweeping immigration reform package since 1986 and would mark a sharp break in the previous policies of the last four years. While Democrats retain a majority of the Senate, the Act faces an uphill battle as it is not clear whether it will pass due to the 60 votes needed to survive a filibuster. In order for the Act to be enacted by congress, we would first expect additional changes and amendments to the current provisions.

**What this all means**

Immigration reform is a complicated and lengthy process, and President Biden's actions so far are demonstrating a shift towards expanded legal immigration protection. Regulatory reforms and congressional action are likely the next, more time-consuming step and could result in the most significant policy reform in decades. At this time, employers should be aware of the Biden Administration's new policies and be attentive of the continued impact of COVID-19 on admission into the U.S.

EY Law will continue to monitor the immigration action developments by the Biden Administration and Congress. Please contact your EY Law LLP immigration professional for additional information and guidance.

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