

Mobility: immigration alert

February 2021

United States

President Biden's US Citizenship Act discussed

Executive summary

On 18 February 2021, a comprehensive immigration reform bill known as the U.S. Citizenship Act of 2021 (the "Act") was introduced in the House of Representatives.

Background

In our prior Alert, [President Biden's Proposed US Citizenship Act Discussed](#), we announced that President Joe Biden had sent the Act to Congress for consideration. Now, the Act has been officially introduced in the House and an identical bill introduced in the Senate as well. The Act embodies the proposals that President Biden had previously announced which, according to a White House press release, are intended to "responsibly manage and secure our border, keep our families and communities safe, and better manage migration across the Hemisphere."

Impact on business immigration

If the Act were to become law, it would have a significant impact on business immigration. Notably, it will:

- ▶ Increase employment-based immigrant visas from 140,000 to 170,000.
- ▶ Recapture unused employment-based green cards from previous years that went unused. Conservative estimates point to upwards of 220,000 green cards expected to be recaptured and used to clear backlogs.
- ▶ Exempt spouses, partners, and children under the age of 21 of lawful permanent residents from annual, per-country caps. This would have the effect of essentially raising the number of immigrant visas available by only counting principal applicants, and not family members.
- ▶ Reform the H-4 (dependent) visa category for spouses and children. Work permits would be provided to dependents of H-1B visa holders, including both spouses *and* children.
- ▶ Prevent H-4 children from "aging out." Such children may extend their status beyond 6 years, and beyond the age of 21, if the H-1B parent maintains their non-immigrant status and the child was younger than 18 when first granted H-4 status. The child's age would be determined at the timing of filing the parent's immigrant petition or labor certification.
- ▶ Permit a one year extension of employment authorization for those in F-1, H-1B, O-1, or L-1 status if 1 year or more has elapsed since the filing of a PERM labor certification or employment-based immigrant visa petition.
- ▶ 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.

- ▶ Eliminate the per-country cap for employment-based green cards. Green cards would also be more readily accessible for lower-wage workers. The Act gives the Department of Homeland Security (DHS) the authority to adjust green card issuance based on whether certain geographic areas or labor market sectors are experiencing high levels of unemployment.
- ▶ Prohibit numerical limits on foreign nationals with an advanced STEM degree in Science, Technology, Engineering, or Mathematics from a U.S. university, making it easier for such individuals to remain in the U.S.
- ▶ Establish the Regional Economic Development Immigrant Grant Visa Pilot Program, which would admit up to 10,000 additional immigrants per year whose employment is essential to the economic development of the cities or counties where they live or work.
- ▶ Give authority to DHS and the Department of Labor (DOL) to issue regulations to prioritize H-1B visas based on the wages offered by employers.
- ▶ Require that DHS and DOL establish an Employment Authorization Commission to make recommendations for improving the employment verification process.

What this means

The Act, one of the most sweeping immigration reform proposals in 30 years, would clear employment-based visa backlogs and reduce wait times. It will also make visas, including certain dependent visas, easier to obtain by recapturing unused visas, eliminating per-country caps, increasing the number of visas available, and making it easier to extend visas. H-4 visa holders will benefit from the added work authorization, which will create a more stable H-4 workforce in the U.S.

While there are no extensive changes specific to the H-1B and L-1 work authorized visa categories, the *U.S. Citizenship Act of 2021* is likely just one of many steps in President Biden's plan for broad U.S. immigration reform. In fact, there are currently multiple standalone bills in Congress aimed at revising specific pieces of the U.S. immigration system.

While the Democrats have simple majorities in both the Senate and the House of Representatives, the Act faces an uphill battle as it requires 60 votes to pass in the Senate. Whether the Act can be passed as is, or whether it will be broken up into multiple, smaller pieces, is yet to be seen. It appears that President Biden is willing to negotiate with Congress, perhaps by turning to such "piecemeal" legislation, in order to move the Act forward.

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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