CLIENT ALERTS & INSIGHTS

Sneak Peek into the Trump 2.0 Administration Immigration Landscape

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Authors: H. Alan Rothenbuecher, Linda Gemind, Margarita S. Krncevic

President-elect Donald Trump has vowed “to carry out the largest domestic deportation operation in American history”, promising to declare a national emergency and deploy the military for enforcement. Building on the policies of his first term, a Trump 2.0 administration is expected to intensify immigration restrictions, emphasizing national security and stricter enforcement. With Republican majorities in the House and Senate, his administration may push for reduced immigration levels and expanded federal oversight over state policies concerning migrants.

Key Immigration Policy Changes Under Trump 2.0

Work Visa Challenges - The first Trump Administration increased the burden of proof for petitioning H-1B employers by issuing increased number of Requests for Evidence (RFEs) challenging payment of Level 1 wages to employees. The first Trump Administration had made multiple attempts to change how prevailing wages were calculated to increase compensation levels for H-1B and E-3 temporary work visas and the PERM green card process. Certain occupations like Computer Programmers were not identified as ‘Specialty Occupations’ by the administration. Consulting companies that placed employees in third-party locations were required to submit additional documents to establish the employer-employee relationship and availability of specialty occupation work. A Trump 2.0 administration could see the reinstatement of these measures to “protect” U.S. workers.

Dwindling popularity of NIW & EB-1 - Immigrant visas for individuals performing work of national interest to the U.S. or with extraordinary skills were increasingly popular under the Biden Administration due to supportive executive orders for STEM professionals working in Artificial Intelligence and other critical and emerging technologies. While the statutory criteria for approval of NIW/EB-1 petitions may not change, a second Trump term may tighten interpretations of "national interest" and "substantial benefit to the U.S.," potentially making these pathways less accessible.

Merit-based Immigration - President-elect Trump has long championed a “merit-based” immigration system prioritizing high-skilled immigrants with points allocated for special skills, education level, job offer, prior work experience, age, and language. A second term could see efforts to reduce the number of green cards issued annually and possibly reallocation of immigration quotas, either through executive action or pushing Congressional action.

Increased Scrutiny, Slower Adjudication and Delays - Emboldened by close advisors like Stephen Miller, President-elect Trump’s immigration policies may involve enhanced background checks, increased administrative processing delays, more visa denials, and no deference to prior determinations for extensions involving the same parties and facts may become more common.

Policies requiring biometrics for dependents, additional interviews for green card applicants, and reduced staffing levels could slow adjudication processes further.

Curtailing Existing Non-Immigrant Programs - In addition to targeting the Deferred Action for Childhood Arrivals (DACA) program and reducing pathways for family-based immigration, the incoming Trump Administration may target humanitarian parole programs by rolling back Temporary Protected Status (TPS) designations for countries including El Salvador, Haiti, Nepal, and Nicaragua, and reinstating travel bans targeting specific nations such as Chad, Libya, Iran, North Korea, Syria, Venezuela, and Yemen. Additionally, refugee resettlement could face significant cuts based on prioritizing national security.

Deportation- A hallmark of President-elect Trump's immigration agenda, deportation efforts will likely intensify focusing on undocumented immigrants with criminal records. Sanctuary cities could face punitive actions, and workplace raids and sweeps in public places by Immigration and Customs Enforcement (ICE) might become more frequent.

Birthright Citizenship - President-elect Trump has reiterated his intent to issue an executive order ending the long-standing constitutional principle that children born in the U.S. are granted citizenship. The federal agencies may require at least one parent to be a U.S. citizen or lawful permanent resident before they will issue a U.S. passport or social security number. However, any action to deny birthright citizenship is likely to be challenged in the federal courts.

Re-introduction of No-match Letters - The incoming Trump administration could revive Social Security Administration (SSA) no-match letters, which were last issued in 2021. The letters are issued to employers advising that the name or Social Security number (SSN) reported for one or more employees does not "match" a name or SSN combination reflected in SSA's records. Employers are cautioned not to use the letters as evidence of immigration status but should notify affected employees. Employees are expected to resolve any discrepancies directly with SSA within a reasonable time period. It is unclear whether any "safe harbor" guidance will be implemented by the incoming Trump administration. Regardless, employers should have a plan in place to terminate employees who are unable to establish continued authorization to work in the U.S.

Preparing for the Trump 2.0 Administration Immigration Landscape

Despite the uncertainty, here are some actions that businesses can take between now and January 2025 to manage or reduce the impact of the above restrictions:

- **Brace for the impact** - Plan and manage expectations with visa-holder employees and leadership teams, and budget for increased immigration costs.
- **Timely Filings** - Prioritize and file visa extension petitions with USCIS in 2024 via premium processing.
- **Compliance Audits** - Conduct internal I-9 audits, rectify errors and ensure compliance with U.S. immigration laws.
- **Renew EADs** - File renewal of Employment Authorization Documents (EADs) for DACA, TPS and H-4 EAD and consider alternate visa sponsorship options.

- **Adjust travel plans** - Recommend employees adjust plans for international travel plans in 2024 and exercise caution while traveling on visas and advance parole in 2025.
- **Relocate Critical Talent** - Move mission-critical projects and associated foreign talent to offices outside the U.S. to ensure business continuity.

President-elect Trump's proposed immigration policies signal that significant changes are possible that could reshape the U.S. immigration landscape, impacting businesses, workers, and families. While the full scope of his agenda remains speculative, preparation and strategic planning will be key to navigating these potential challenges.

For more information, please contact a member of Benesch's Immigration Practice Group.