



Employment-Based Immigration Reform Legislation

Whereas, the U.S. economy is ever more dependent on skilled, educated and innovative workers for its growth and vitality;

Whereas, the United States does not have a monopoly on creative and innovative thinkers, and the more talent we can harness from all sources, the more successful we will be as a nation;

Whereas, current U.S. immigration law enables foreign nationals to enter the United States as students or skilled guest workers for a short term under significant constraints, while making it difficult for those who wish so to become Americans;

Whereas, such a policy not only deprives our nation of their talents, but also directly benefits the overseas competitors who ultimately employ the individuals we have educated and trained;

Whereas to fully benefit from their talents, the United States needs to provide a real path to permanent residence and citizenship that completely vests these individuals in America's promise and future;

Therefore, to restore U.S. immigration policy to a citizenship-based model for skilled workers –rather than the temporary-worker model we have now – the following reforms are proposed:

Title I — Reform of Employment-Based Immigrant Visa Provisions

Section 101 — Bureau of Labor Statistics Analysis, Reports, and Recommendations Regarding U.S. High-Skilled Workforce.

- (a) BLS Study — The Bureau of Labor Statistics (BLS) shall, using its internal expertise and drawing upon outside experts as required, identify current and projected shortages of high-skilled workers by occupational category and subcategory, region, skill levels, experience and other relevant factors. The study shall identify the sources and potential remedies for such shortages, including changes in policies and programs involving education, compensation, employment conditions, government-sponsored incentives or disincentives, and short- and long-term immigration policies that should be adopted to remedy such shortages.
- (b) BLS Reports and Recommendation — The BLS shall submit a report to Congress by January 1, 2013, that summarizes the results and conclusions from its study and makes recommendations for policies and programs involving education, compensation, employment conditions, government-sponsored incentives or disincentives, and short- and long-term immigration policies that will provide an adequate high-skilled workforce in a manner that

promotes opportunity for Americans to fill that workforce, but takes full advantage of the availability of foreign-born skilled workers, especially those educated in U.S. institutions of higher education.

- (c) BLS Annual Reports — The BLS shall update its initial report annually to identify projected occupational demand and supply imbalances with recommendations regarding the portion of the gaps that can be provided by immigration without unduly diminishing incentives for continued increases in domestic supply.
- (d) Schedule A — The Secretary of Labor shall update Schedule A on the basis of each BLS report to include all occupations with current or projected domestic supply estimated to fall 10 percent or more below projected demand on a national basis over the succeeding five years.
- (e) Congressional Action — The BLS recommendations shall be subject to consideration by Congress using procedures for expedited consideration (but not default approval).

Section 102 — Elimination of Dependents from Employment-Based Count. The annual visa limits (adjusted in accordance with the recommendations provided pursuant to Section 101(e)) shall be applied only to the employee. An employee's spouse and minor children are authorized to accompany or follow-to-join without numerical limit.

Section 103 — Visa Limit Carve-Out for Schedule A and STEM Occupations. A fee-based exemption from visa limits for Schedule A and professionals with advanced degrees in science, technology, engineering and mathematics (STEM) from U.S. universities shall be created, with the fee applied to educational programs to increase domestic production of members of these professions.

Section 104 — Modification of Per-Country Limit.

- (a) Increase of Per-Country Limits — The per-country immigrant visa limit shall be increased to 10 percent for both employment- and family-based petitions.
- (b) Elimination of Per-Country Limit for Certain Immigrants — The per-country limit shall be eliminated for immigrants in U.S. STEM and Schedule A categories (as revised pursuant to Section 101(d)).

Section 105 — Unused Visa Number Recapture, Roll-Over and Regulatory Flexibility.

- (a) Recapture — All unused employment visa numbers since 1992 shall be recaptured and be applied in strict priority date order, regardless of category or country, and not added to current visa availability until all employment-based backlogs are eliminated. After backlog elimination, excess visas can be applied to current petitions.
- (b) Roll-Over and Regulatory Flexibility — Unused visa numbers in any fiscal year shall be rolled over to the next fiscal year within the employment-based category, and regulatory flexibility will

permit overshooting the annual total by up to 2 percent per year, with the excess to be deducted in the following fiscal year.

Section 106 — Promoting Permanent Residence as the Preferred Vehicle for Providing Immigrant Employees in Permanent Jobs.

- (a) Processing Reforms — The Department of Homeland Security shall implement a plan by January 1, 2013 to impose 30-day processing time limits on labor certification audits, petition adjudications, adjustment of status adjudications and visa interview scheduling.
- (b) OPT Extension — Indefinite renewal of Optional Practical Training (OPT) status on an annual basis (after initial period of 17 months to coincide with May to October transition) shall be permitted if sponsored by a current employer and there is a green card process ongoing (whether for that employer or another).
- (c) Early Adjustment Filing — Filing of adjustment of status applications based on approved (or concurrently filed) employment-based petitions during periods when visas are not available for the beneficiary for the applicable category or country shall be permitted.
- (d) Transitional Status — Pending implementation of the mandate in subsection (c), a limited transitional visa category shall be provided for employees coming from abroad who do not qualify for the programs provided by subsections (a) and (b), that assures that employers can have such employees on the job within 60 days of recruitment and filing of employment-based green card application documents during any additional period required for application and petition processing. Status will terminate one year after denial or lapse of the green card application. New applications shall be filed under the provisions of subsection (b), provided that labor certification, if required, is completed within the remaining one year of transitional status.

Title II — Student and Status Maintenance Reforms

Section 201 — Student and Exchange Visitor Reforms. The foreign residence maintenance requirement (i.e. allow dual intent) for students at accredited degree-granting institutions and exchange visitors who are students at, or employed by, such institutions shall be eliminated.

Section 202 — Status Protection Reform.

- (a) Revalidation of Visas — The State Department shall provide revalidation of all visa categories other than B-1/B-2 in the United States.
- (b) Validity Periods — The State Department shall mandate minimum visa validity periods for exchange, student and employment visas, irrespective of reciprocity schedules.
- (c) Pre-Adjudication of Waivers — The State Department shall mandate pre-adjudication of inadmissibility waiver applications prior to visa application, including both immigrant and nonimmigrant applications, even if the waiver applicant is present in the United States.

Title III — Reform of Employment-Based Nonimmigrant Visa Provisions

Section 301 — H-1B Visa Reform.

- (a) H-1B Visas Limited to Temporary Positions — Effective January 1, 2013, petitions shall be limited to two years, renewable for one additional year, with no transfer to longer-term status with the petitioning employer or any affiliated employer. H-1B visa holders must be out of the country for at least two years to return with the same employer. Employers seeking permanent employees will have green cards and transitional status available.
- (b) Immediate H-1B Reforms — Attestation to a recruitment process for any petition for H-1B workers shall be required for all employers. Until the effective date of subsection (a), the beneficiaries of these petitions shall have current renewal and portability benefits. An H-1B cannot be used by an employer unless more than 50 percent of the job category being filled is currently held by U.S. workers. The H-1B displacement rules shall be extended to cover contractor replacement resulting in displacement of U.S. workers. A 60-day grace period shall be added to H-1B status in the case of involuntary termination.

Section 302 — L-1 Visa Reform.

- (a) Eliminate Staffing Company Abuse — An L-1 visa shall not be used to place an employee at a third-party work site unless all pay, benefits and supervision of the employee are within the sole control of the petitioning employer and a Labor Condition Application has been filed attesting to these facts.
- (b) Limit L-1B to Short-Term Requirements — Effective January 1, 2013, L-1B petitions shall be limited to two years, renewable for one additional year, with no transfer to longer-term status with the petitioning employer or any affiliated employer during the additional year. L-1Bs must be out of the country for at least two years to return with the same employer. Multinational employers seeking permanent employees can use green cards and transitional status for those to be permanently re-assigned.

Title IV — Restriction on Immigration Provisions in Trade Agreements

- (a) Limit on USTR Authority — Regarding immigration provisions, the United States Trade Representative shall be limited to receiving proposed changes in U.S. law and referring them to Congress for action. No trade agreement shall be concluded which contains immigration provisions unless pre-approved as legislation by Congress.
- (b) Fast Track Limitation — If any trade legislation submitted by the president for *fast track* consideration contains immigration provisions, those provisions shall be separated from the legislation in either chamber of Congress on a point of order by any member (which point of order cannot be waived except on a two-thirds vote) and thereafter considered under regular order as separate legislation.