

THE WHITE HOUSE
WASHINGTON
1/23/2017

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: ANDREW BREMBERG
SUBJECT: Executive Order on Protecting American Jobs and Workers by
Strengthening the Integrity of Foreign Worker Visa Programs

Purpose

With this Executive Order, President Trump will help fulfill several campaign promises by aligning immigration policies with the national interest, and ensuring that officials administer our laws in a manner that prioritizes the interests of American workers and—to the maximum degree possible—the jobs, wages, and well-being of those workers.

Background

A primary factor driving illegal immigration to the United States is the availability of jobs and benefits. Eliminating this jobs magnet will reduce the flow of illegal entries and visa overstays. The unlawful employment of aliens has had a devastating impact on the wages and jobs of American workers, especially low-skilled, teenage, and African-American and Hispanic workers.

Discussion

This Executive Order fulfills several key campaign promises related to immigration by, among other things: (1) aligning with the law the issuance of work permits to aliens in the United States; (2) reviewing and terminating parole programs that were created to avoid immigration caps and programs authorized by Congress; (3) directing DHS to align many other nonimmigrant visa programs with congressional intent; (4) establishing a commission to analyze our current immigration program and make recommendations on how to make it better serve the national interest and be more merit-based; (5) directing DHS to identify ways to expand the use of E-Verify within the bounds of existing law; and, (6) publishing data in a format easy for the public to understand regarding immigration patterns to the United States and a detailed description of the effect of immigration on wages and employment of U.S. workers since FY 2000.

Recommendation

I recommend that you sign the attached Executive Order.

Approve _____
Disapprove _____
Needs more discussion _____

Executive Order—Protecting American Jobs and Workers by Strengthening the Integrity of Foreign Worker Visa Programs

EXECUTIVE ORDER

Protecting American Jobs and Workers by Strengthening the Integrity of Foreign Worker Visa Programs

By the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby order as follows:

Section 1. Purpose. Our country’s immigration policies should be designed and implemented to serve, first and foremost, the U.S. national interest. In particular, visa programs for foreign workers, as well as all the other lawful methods of admission to our country that authorize foreign nationals to work here, should be administered in a manner that protects the civil rights of American workers and current lawful residents, and that prioritizes the protection of American workers—our forgotten working people—and the jobs they hold.

Sec. 2. Policy. It shall be the policy of the executive branch to implement the immigration laws, to the extent consistent with law, in a manner that prioritizes the national interest and protects, to the maximum degree possible, the jobs, wages, and well-being of United States workers.

Sec. 3. Definitions. For purposes of this order:

- (a) The term “B-1” refers to the nonimmigrant visa classification for temporary business visitors, defined at section 101(a)(15)(B) of the Immigration and Nationality Act, as amended (INA) (8 U.S.C. 1101(a)(15)(B)).
- (b) The term “E-2” refers to the nonimmigrant visa classification for aliens entering the United States under treaties of commerce and navigation to manage enterprises in which they have invested, defined at section 101(a)(15)(E)(ii) of the INA (8 U.S.C. 1101(a)(15)(E)(ii)).
- (c) The term “E-Verify” refers to the electronic employment authorization verification program described in section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104-208, div. C, as amended (8 U.S.C. 1324a note).
- (d) The term “H-1B” refers to the nonimmigrant visa classification for “specialty occupation workers,” defined at section 101(a)(15)(H)(i)(b) of the INA (8 U.S.C. 1101(a)(15)(H)(i)(b)).

(e) The term “H-2A” refers to the nonimmigrant visa classification for temporary agricultural workers defined at section 101(a)(15)(H)(ii)(a) of the INA (8 U.S.C. 1101(a)(15)(H)(ii)(a)).

(f) The term “J-1 Summer Work Travel program” refers to the visa program, described at 22 C.F.R. 62.32, for foreign college and university students participating in Summer Work Travel Programs in the United States, and admitted under section 101(a)(15)(J) of the INA (8 U.S.C. 1101(a)(15)(J)).

(g) The term “L-1” refers to the nonimmigrant visa classification for intracompany transferees, defined at section 101(a)(15)(L) of the INA (8 U.S.C. 1101(a)(15)(L)).

(h) The term “United States worker” (or “U.S. worker”) has the meaning given in section 212(n)(4)(E) of the INA (8 U.S.C. 1182(n)(4)(E)).

Sec. 4. Agency Responsibilities for Reforming Immigration Policies and Procedures. In furtherance of the policy described in section 2 of this order, I hereby direct that:

(a) The Secretary of Homeland Security shall—

(i) within 90 days of the date of this order, review all regulations that allow foreign nationals to work in the United States, determine which of those regulations violate the immigration laws or are otherwise not in the national interest and should be rescinded, and propose for notice and comment a rule to rescind or modify such regulations;

(ii) (A) propose for notice and comment a regulation that would conform the use of the Secretary’s parole authority to the requirements of the immigration laws and would clarify that parole may never be used to circumvent statutory immigration policy or admit into the United States entire classes of foreign nationals who do not qualify for admission under existing immigration categories; and

(B) immediately terminate all existing parole policies, guidance, and programs that do not comport with the principles described in subparagraph (A) of this paragraph or that otherwise do not comport with the requirements of the INA;

(iii) in consultation with the Secretaries of State and Labor, as appropriate, propose for notice and comment a regulation (or make changes to policy or operations, as appropriate) to restore the integrity of employment-based nonimmigrant worker programs and better protect U.S. and foreign workers affected by those programs;

(iv) consider ways to make the process for allocating H-1B visas more efficient and ensure that beneficiaries of the program are the best and the brightest;

(v) within 180 days of the date of this order,

(A) start performing site visits at places of employment of L-1 nonimmigrant workers, including third-party worksites where L-1 workers have been placed by the U.S. employers that petitioned for them; and

(B) develop a plan to expand the site-visit program within two years to cover all employment-based visa programs;

(vi) within one year of the date of this order, establish a commission or advisory committee—

(A) to analyze the nation's current immigration policies and their impact on our society, the economy, U.S. workers, and the foreign policy and national security interests of the United States; and

(B) to provide recommendations for making U.S. immigration policy better serve the national interest, and to recommend changes to the immigration laws to move towards a merit-based system;

(vii) propose for notice and comment a regulation that would reform practical training programs for foreign students to prevent the disadvantaging of U.S. students in the workforce, better protect U.S. and foreign workers affected by such programs, restore the integrity of student visa programs, ensure compliance, and improve monitoring of foreign students;

(viii) propose for notice and comment a regulation that would clarify comprehensively what activity is and is not permissible by aliens who enter on business/tourist visas, ensuring that the statutory prohibition on the performance of skilled or unskilled labor in such status is enforced;

(ix) within 90 days of this order, submit to the President a list of options for ensuring the efficient processing of petitions for the H-2A nonimmigrant agricultural visa program, while maintaining programmatic integrity; and

(x) within 90 days of the date of this order, submit to the President a list of options for incentivizing and expanding participation by employers in E-Verify, including by conditioning, to the maximum extent allowed by law, certain immigration-related benefits on participation in E-Verify;

- (b) The Secretary of State and the Secretary of Homeland Security, as appropriate, shall—
- (i) within 30 days of the date of this order, conform to Congressional intent the manner in which the Department of State and the Department of Homeland Security determine when an immigrant visa is “immediately available”; and
 - (ii) propose for notice and comment a regulation that would reform the manner in which aliens file for adjustment to lawful permanent residence in order to reduce inefficiencies in the way immigrant visas are allocated; and
 - (iii) propose for notice and comment a regulation that would reform the E-2 treaty investor visa category for foreign entrepreneurs so that activity allowed for such entrepreneurs conforms to the requirements of the immigration laws;

(c) The Secretary of State shall propose for notice and comment a rule that would reform the J-1 Summer Work Travel program to improve protections of U.S. workers and participating foreign workers; and

(d) The Secretary of Labor shall—

(i) in consultation with the Secretary of State, the Attorney General, and the Secretary of Homeland Security,

(A) initiate an investigation of the extent of any injury to U.S. workers caused by the employment in the United States of foreign workers admitted under nonimmigrant visa programs or by the receipt of services from such foreign workers by American employers, and

(B) within 18 months of the date of this order, provide the President a report based on such investigation; and

(ii) provide the President an initial report within nine months of the date of this order on the actual or potential injury to U.S. workers caused, directly or indirectly, by work performed by nonimmigrant workers in the H-1B, L-1, and B-1 visa categories.

Sec. 5. Transparency. To be more transparent with the American people, and in order to more effectively implement policies and practices that serve the national interest, I hereby direct that:

(a) the Secretary of Homeland Security shall—

(i) for every fiscal year—

(A) publish a report, within one month of the end of the first half of the fiscal year, detailing the number of new Employment Authorization Documents (EADs) issued during the first half of that fiscal year, the total number of individuals within the United States with EADs, and the categories or bases for issuance of all such EADs; and

(B) publish a report, within one month of the end of the fiscal year, detailing the total number of EADs issued during that fiscal year, the total number of individuals within the United States with EADs, and the categories or bases for issuance for all such EADs;

(ii) twice each fiscal year, and in consultation with the Secretaries of State and Labor, publish a report detailing—

(A) the total number of foreign-born persons authorized to work in the United States, disaggregated by immigration status; and

(B) the total number of persons in the United States in each of the employment-based nonimmigrant statuses; and

(iii) immediately restart work on regular benefit fraud assessments for all immigration benefits categories;

(b) the Director of the U.S. Census Bureau, in consultation with the Secretaries of State, Commerce, Labor, and Homeland Security, shall publish a report each year on immigration patterns in the United States, including an estimate of the size of the foreign-born population in the United States;

(c) the Director of the U.S. Census Bureau shall include questions to determine U.S. citizenship and immigration status on the long-form questionnaire in the decennial census; and

(d) within 18 months of the publication of this order, the Secretary of Labor, in consultation with the Secretaries of State and Homeland Security, shall publish a report detailing the effect of immigration (both legal and illegal) and of the employment of foreign temporary workers on wages and employment of U.S. workers since Fiscal Year 2000.

Sec. 6. Rescission. The heads of all executive departments and agencies shall rescind any orders, rules, regulations, guidelines, or policies implementing or enforcing the programs rescinded by this order, in the manner and to the extent consistent with law.

Sec. 7. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect—

(i) the authority granted by law to an executive department, agency, or the head thereof;
or

(ii) the functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.