

# Immigration

## Outlook for the 119th Congress & the Trump Administration

### Key Takeaways

- Expect increased denial rates and processing delays for work visas and other employment-based immigration applications.
  - The previous Trump administration implemented policies that significantly increased scrutiny on work visas such as H-1B (specialty occupation visa for professionals), increasing the rate of denials for new H-1B visas from 6 percent to 24 percent. We expect to see a similar change in processing of H-1B visa petitions, with no deference given to the government's own prior decisions.
  - Visa issuance at consulates abroad is likely to be slowed due to factors such as limited or reduced appointment availability and enhanced vetting of visa applicants. The Trump administration may also seek to limit waivers of in-person visa interviews at consulates, as well as limit appointment availability for third-country national applicants not applying for a visa in their home country. This will lead to longer wait times for visa interviews, increasing already-existing backlogs at consulates abroad, which will delay the arrival of sponsored foreign employees to U.S. companies.
  - In-country applicants for green cards are likely to be subject to mandatory interviews at local U.S. Citizenship and Immigration Services (USCIS) offices, which have been largely waived in the past four years. This will lead to lengthy delays in adjudications of all types of applications, including green cards and naturalization applications.
- Work visas could be harder to obtain and may require companies to pay considerably higher wages to their foreign workers.
  - In the previous Trump administration, the Department of Labor published a rule that significantly raised the minimum prevailing wages that were required for H-1B visa holders and certain applicants for employment-based permanent residency. The rule was enjoined by the courts and withdrawn by the Biden administration, but we expect it to be reintroduced.
  - In the previous Trump administration, the Department of Homeland Security (DHS) published a rule that changed the distribution of H-1B visas in the annual lottery, awarding H-1B visas only to the highest paid employees at U.S. companies. The rule was enjoined by the courts, but we expect it to be reintroduced and to become effective in time for the March 2025 lottery.
  - The second Trump administration may rescind work authorization for spouses of certain nonimmigrant visa holders (primarily, H-4 spouses), as the previous Trump administration attempted to do. Certain work permits are also eligible for automatic extensions based on a timely filed renewal. If the second Trump administration eliminates this benefit, it would impact foreign workers' ability to maintain their employment during periods of renewal.

- Student work authorization may be significantly limited or rescinded entirely.
  - The Optional Practical Training (OPT) and STEM OPT programs are based on administrative rules which would permit the Trump administration to rescind the programs through the rulemaking process. During the previous Trump administration, DHS proposed a rule that would limit the time that students can remain in the United States, which would impact the ability of students or recent graduates to work pursuant to OPT or STEM OPT.
  - A bill drafted by President Trump's advisor Stephen Miller when he worked as a legislative aid to former Sen. Jeff Sessions (R-AL) would prohibit international students with master's or bachelor's degrees from working in the United States in H-1B status without first gaining 10 years of experience in a foreign country, a fundamental change in U.S. immigration policy. Individuals with a Ph.D. from a U.S. university first would need to work two years in another country to be eligible for an H-1B visa. Mr. Miller is expected to be named deputy chief of staff for policy and is likely to once again be in charge of setting U.S. immigration policy in the Trump administration.
  - However, during the campaign, President Trump proposed automatic permanent residency for noncitizen graduates of U.S. colleges and universities, including junior colleges. This proposal would require congressional approval, and it is unclear if such legislation may pass a Republican Congress, but it could signal that President Trump's position on foreign students has shifted.
- Investigations of U.S. companies hiring undocumented or ineligible foreign workers may increase.
  - The Trump administration will likely increase the number of visa fraud investigations, as well as employer audits by the USCIS Fraud Detection and National Security Directorate, which investigates fraud in immigration petitions by U.S. employers.
  - President Trump will restart workplace raids, according to incoming "border czar" Tom Homan, with the stated intention of addressing labor and sex trafficking.
  - The second Trump administration is expected to be active in I-9 audits and to push for the expanded use of E-Verify, a system intended to prove that employees are eligible to work in the United States, which has also led to some improper denials of eligible workers.
  - We also expect the administration to reinstate the USCIS Denaturalization Task Force, which consisted of attorneys reviewing past naturalization cases and reopening them with the goal of stripping naturalized U.S. citizens of their citizenship and removing them from the United States if the Task Force found inconsistencies or other issues in their naturalization applications.
- Expect humanitarian immigration policies to be curtailed.
  - President Trump is expected to revoke humanitarian parole and Temporary Protected Status for most countries, including the United for Ukraine program, parole for Afghan refugees, and parole programs for Central American citizens sponsored by their families in the United States.
  - President Trump has stated in the past that it is not his intention to target Dreamers, but that he would focus on deportation of immigrants accused of crimes. Nevertheless, Dreamers' ability to remain in the United States and continue renewing their work permits may also be impacted as litigation questioning the constitutionality of the Deferred Action for Childhood Arrivals (DACA) program makes its way through the courts. The previous Trump administration terminated the DACA program, which was later upheld by the Supreme Court, but no new applicants have been allowed to apply for work authorization or protection from removal from the United States. The previous Trump administration had also sought a deal with Democrats that would provide a permanent status for DACA recipients in exchange for enhanced border security measures.

- President Trump is expected to significantly reduce the number of refugees that the United States will accept from other countries (in 2020, he reduced the number to 15,000 from the typical 125,000).
- The Trump administration may restrict eligibility for T and U visas for victims of trafficking and serious crimes.
- President Trump has promised to crack down on illegal crossings at the southern border and to initiate mass deportations of undocumented immigrants already living in the United States.
  - President Trump will likely act quickly to restore the Migrant Protection Protocols (the “Remain in Mexico” policy) under which immigrants seeking asylum in the United States were required to wait in Mexico for their court hearings.
  - President Trump has promised mass deportations of undocumented immigrants currently in the United States. The administration will likely leverage “expedited removal” processes to remove those undocumented immigrants from the United States. As part of this process, President Trump may attempt to funnel military spending toward border security and mobilize military and local law enforcement to assist in deportations. President Trump has indicated a desire to use the Alien Enemies Act of 1798 to deploy federal troops to assist at the border. He has stated that deportations will begin with those who have been accused of crimes and those with deportation orders from the immigration court. The recently announced “border czar” Tom Homan has stated that there will not be “a mass sweep of neighborhoods” or “building [of] concentration camps,” but that arrests will be targeted as the result of investigative processes.
  - President Trump plans to increase the number of border agents by hiring 10,000 new Border Patrol agents and has promised pay raises and bonuses for recruitment and retention purposes.
  - President Trump has promised to end sanctuary cities by seeking to eliminate federal funding for those municipalities that refuse to cooperate with Immigration and Customs Enforcement (ICE) in the removal of undocumented immigrants found in their jurisdictions.
  - The Trump administration is likely to seek to terminate the *Flores* settlement that governs the detention of children and families, and to seek to detain all categories of immigrants until their immigration court hearings.
  - President Trump has expressed a desire to end birthright citizenship. In one of his campaign videos, he promised to sign an executive order that would instruct agencies to require that any child born in the United States must have at least one parent who is a lawful permanent resident or citizen before the issuance of a passport or social security number. Such an executive order would likely be challenged in court as directly in conflict with the 14th Amendment of the Constitution.
- Here’s what to expect in the first 100 days.
  - Changes to the H-1B lottery and prevailing wage requirements.
  - Lengthy processing delays and increased rate of requests for evidence and denials in all immigration applications, both at consulates abroad and at USCIS offices in the United States.
  - Repeal of executive orders establishing humanitarian parole programs.
  - Start of mass deportations of undocumented immigrants.

## Additional Insights

- We expect that the House of Representatives will move swiftly to once again pass legislation similar to the Secure the Border Act of 2023 (H.R. 2 in the 118th Congress). It is unclear if a compromise on border security legislation can be reached in the U.S. Senate that will be able to muster the 60 votes needed to pass. Absent the passage of significant border security legislation, we do not expect that immigration reform will pass in the next Congress.
- There is likely to be an effort in the 119th Congress to extend the authorization of the EB-5 Regional Center Program, even though it does not expire until September 30, 2027. Industry stakeholders are likely to push for reauthorization before September 30, 2026, to ensure that USCIS can continue processing pending EB-5 petitions in the event of a future lapse in authorization.
- Most of the expected immigration changes can be achieved by reversing executive orders, proposing and finalizing regulations and implementing policy changes that do not require congressional action or notice and comment.
- The DACA case is before the 5th Circuit Court of Appeals, with a decision expected any day. The case is then likely to be once again considered by the Supreme Court, this time with a higher probability of DACA being struck down.
- We expect significant levels of litigation around immigration policies, as demonstrated by the litigation trends that occurred during the previous Trump administration. President Trump's advisors are promising to act faster in implementing changes to the U.S. immigration system, but immigration attorneys and nonprofit organizations are likely to quickly respond with legal challenges. With courts no longer deferring to administrative agencies after the Supreme Court's decision in *Loper Bright* earlier this year striking down *Chevron* deference, courts may be more likely to side with the challengers than ever before.

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