

Border, Economic Opportunity and Immigration Modernization Act of 2013

(This will become law only if it is passed by Congress)

(PART III)

By: Michael Phulwani, Esq. and David H. Nachman, Esq.

This is Part III of the series of Articles on Comprehensive Immigration Reform Bill now entitled as "Border, Economic Opportunity and Immigration Modernization Act of 2013."

The bill was introduced in the Congress after the Gang of Eight Bipartisan group of the Senators agreed on various provisions of the bill. The bill is now pending before the Senate Judiciary Committee for consideration.

In Parts I&II of the Bill, we discussed about Legalization of undocumented aliens who entered the US before December 30, 2011 and the provision relating to Family and Employment based immigrants eliminating the backlogs, elimination of fourth preference category for brothers and sisters of US Citizens, elimination of Lottery program, and various other provisions. In this part of the article, we continue to provide information about the provisions relating to Temporary Visas.

Temporary Visas

H-1B Visa Reform

- We will raise the base cap of 65,000 to 110,000 (we amend the current 20,000 exemption for U.S. advanced degree holders to be a 25,000 exemption for advanced degree graduates in science, technology, engineering, and mathematics from U.S. Schools).
- In future years, the cap can go as high as 180,000. The cap will increase/decrease in the following way:
 - a. It will be based on two factors plugged into one formula known as the "High Skilled Jobs Demand Index" (with each factor weighed at 50%):
 - i. The percentage by which cap-subject nonimmigrant visa petitions approved under section 101(a)(15)(H)(i)(b) for a fiscal year exceeds/fails to meet the cap (50%)
 - ii. The inverse of the percentage increase/decrease between the previous fiscal year and the current fiscal year in the number of unemployed persons in the "management, professional, and related occupations category" of BLS data (50%).
 - b. The most the cap can increase/decrease by each year is 10,000 visas.
- We prevent H-1B workers from undercutting the wages paid to American workers by requiring employers to pay significantly higher wages for H-1B workers than under

current law (and to first advertise the jobs to American workers at this higher wage before hiring an H-1B worker).

- We will provide spouses of H-1B workers with work authorization if the sending country of the worker provides reciprocal treatment to spouses of U.S. workers.
- We will establish a 60-day transition period for H-1B workers to change jobs.
- We will provide dual intent visas for all students who come here on bachelor's degree programs or above.
- We crack down on abusers of the H-1B system by requiring "H-1B dependent employers" to pay significantly higher wages and fees than normal users of the program.
- If the employer has 50 or more employees, and more than 30% but less than 50% are H-1B or L-1 employees (who do not have a green card petition pending), the employer must pay a \$5,000 fee per additional worker in either of these two statuses.
- If the employer has 50 or more employees, and more than 50% are H-1B or L-1 employees (who do not have a green card petition pending), the employer must pay a \$10,000 fee per additional worker in either of these two statuses.
- We will also crack down on the use of the H-1B and L visas to outsource American jobs by prohibiting companies whose U.S. workforce largely consists of foreign guest workers from obtaining additional H-1B and L visas.
- In Fiscal Year 2014, companies will be banned from bringing in any additional workers if more than 75% of their workers are H-1B or L-1 employees.
- In Fiscal Year 2015, the ban applies to companies if more than 65% of their workforce are H-1B and L-1 workers. In Fiscal Year 2016, the ban moves to 50%
- We require recruiting of American workers prior to hiring an H-1B nonimmigrant. The Secretary of Labor must establish a searchable website for posting H1B positions. The site must be operational and online within 90 days of the passage of the new law. We require employers to post a detailed job opening on the Department of Labor's website for at least 30 calendar days before hiring an H1B applicant to fill that position.
- We bar employers from recruiting or giving preference to H-1B or OPT workers over American workers.
- We establish significant new authorities and penalties to prevent, detect, and deter fraud and abuse of the H-1B and L-1 visa systems by fraudulent employers.

The bill comprises of 840 pages dealing with provisions relating to various areas mentioned above and Border Security under which \$3 billion dollars will be allocated for Border Security Fund. Border Fencing, Trigger to Adjustment of Status from Registered Immigrant Status to Lawful Permanent Resident etc.

We will continue our analyses of the bill and how the bill is moving in the Congress on our fourth coming articles.

For more information, please feel free to contact the Immigration and Nationality Lawyers at the NPZ Law Group at 201-670-0006 or by e-mailing us at info@visaserve.com.

To Be Continued...