

GMS Flash Alert



Immigration Edition

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United States - Immigration Bill in Congress, Reforms Planned

On February 18, 2021, Representative Linda Sanchez (D-CA) and Senator Robert Menendez (D-NJ) formally introduced a new immigration bill – the *U.S. Citizenship Act of 2021*.¹ On his first day in office, President Joseph Biden released a fact sheet outlining his intention to send a comprehensive immigration bill to Congress to “restore humanity and American values to our immigration system.”² The *U.S. Citizenship Act of 2021* is the bill by which this administration hopes to achieve this goal.

WHY THIS MATTERS

This legislation aims to execute on many of President Biden’s campaign promises, including providing pathways to citizenship for certain undocumented individuals as well as streamlining multiple employment-based programs for nonimmigrant and immigrant visas. (For related coverage, see [GMS Flash Alert 2021-037](#), 22 January 2021.)

There are many changes foreseen in this legislation that could impact the ability of U.S. employers to hire and retain foreign talent. Employers with employees currently holding nonimmigrant visas as well as employers seeking to sponsor employees for immigrant visas should monitor the legislation, as reforms to the current U.S. immigration system could affect portions of their workforce.

Provisions in the U.S. Citizenship Act of 2021 Impacting Business Immigration

The provisions in the *U.S. Citizenship Act* which, if implemented, could impact business immigration are summarized below:

- **Recapture of immigrant visas lost to bureaucratic delay** – This section of the immigration bill seeks to recapture unused employment-based green-card numbers from fiscal years 1992 to 2020 and increase the number of green-

card immigrant visas issued per fiscal year from 140,000 to 170,000.

- **Exempting doctoral degree graduates in the science, technology, engineering, and mathematics (“STEM”) fields from U.S.-accredited universities from the numerical limits on green cards** – The section would make it easier for STEM doctoral graduates to remain in the United States while they search for employment.
- **Eliminating per-country caps for employment-based immigrants** – This section would benefit green-card applicants, particularly foreign nationals born in India or the People’s Republic of China, who under the current green-card allotment system are subject to significant back-logs awaiting immigrant visas to be available to them in order to complete the green-card sponsorship process.
- **Increased immigrant visas for other workers** – This section would increase the number of immigrant visas in the employment-based third preference category of “other workers” from 10,000 to 40,000 (i.e., for cases where the role would require less than two years of experience).
- **Flexible adjustments to employment-based immigrant visa programs** – This section would authorize the Secretary of Homeland Security, in consultation with the Secretary of Labor, to reduce the admissions of EB-2 or EB-3 immigrants during times of high unemployment in particular geographic areas or labor market sectors.
- **“Wage-based consideration” of H-1B numbers** – This section would authorize the prioritization of H-1B-visa allotment based on the wages offered to the prospective H-1B applicant.
- **Work authorization for H-4-visa holders** – This section would expand the benefit of work authorization for H-4-visa holders to include both spouses and children of H-1B-visa holders. Under the current regulations, the ability to apply for work authorization is only available to H-4 spouses where the primary H-1B-visa holder has reached a certain milestone in his or her respective green-card process. H-4 dependent children may also extend their status beyond the age of 21 so long as the H-1B parent is maintaining his or her status and the child was younger than 18 when first granted nonimmigrant status.
- **Visa extensions for individuals pursuing green cards** – This provision would provide for additional extensions of nonimmigrant visa status in one-year increments to persons with F-1, H-1B, L, and O visa status, if their employment-based immigrant visa petitions or PERM labor certifications have been pending for more than one year.
- **Civil penalties for labor law violations** – The bill also includes additional civil penalties for employer violations of federal, state or local labor laws with respect to unauthorized workers.

Other Notable Provisions in the U.S. Citizenship Act

- **Reclassification of spouses and minor children of lawful permanent residents as immediate relatives** – This section seeks to reclassify spouses and minor children of lawful permanent residents as “immediate relatives.” As a result, immigrant visa numbers would become immediately available for many applicants who have been waiting several years in order to complete the green-card sponsorship process.
- **Promoting family unity** – This section would repeal the three- and ten-year bars for noncitizens who depart the United States after accumulating 180 days or one year, respectively, of unlawful presence in the country.
- **Lawful prospective immigrant status** – A new section would be added to the Immigration and Naturalization Act that allow the Department of Homeland Security to grant lawful prospective immigrant (“LPI”) status to certain undocumented noncitizens and their immediate dependents (spouse and children) who meet the program’s requirements. The LPI status would be valid for a six-year period and provide valid work authorization in the United States.

- **Earned roadmap to citizenship for certain undocumented individuals** – Several new sections provide a path for foreign nationals currently holding DACA, TPS, or H-2A status to apply for permanent residence provided the applicants meet certain requirements specific to their respective visa programs.
- **F-1 “Dual Intent”** – This section extends dual intent to full-time post-secondary F-1 students. This would allow eligible students to apply for legal permanent residence status while completing their studies.
- **Expungement and sentencing** – This section changes the definition of “conviction” for immigration purposes to no longer include any adjudication or judgement of guilt that has been dismissed, expunged, deferred, annulled, invalidated, withheld, or vacated. Only the period of incarceration ordered by the court will be considered for immigration purposes.
- **Modifications of naturalization provisions** – This section reduces the number of years needed to fulfill the physical residence requirement for legal permanent residents (“LPRs”) seeking to file for naturalization. Under the revised provision, the residence requirement will be reduced to three years for those LPRs who, for at least three years before becoming an LPR, were both lawfully present and eligible for employment authorization.

KPMG LAW LLP NOTE

In order to become law, the bill must first pass both the House of Representatives and the Senate before it is signed by President Biden. Given the wide-ranging changes proposed in the bill, it is anticipated Senate Democrats will face challenges in passing the bill in its current form. The bill is expected to undergo several amendments and will require votes from Republican Senators in order to amass a sufficient number of votes to move forward.

U.S. employers should pay close attention to any changes taking place so they can strategize accordingly to address workplace planning needs as well as to foster continued immigration compliance.

KPMG Law LLP in Canada will continue to monitor this closely. We will endeavor to keep readers of *GMS Flash Alert* posted on any important developments as and when they occur

FOOTNOTES:

1 To see the bill, click [here](#).

2 See: White House, Statements and Releases (January 20, 2021) “[Fact Sheet: President Biden Sends Immigration Bill to Congress as Part of His Commitment to Modernize our Immigration System.](#)”

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Contact us

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