

ACC SC 2025 Winter Meeting Immigration Update

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Agenda

Trump 2.0

Executive Orders and Business Impact

TPS Changes

Worksite Enforcement Update

Visas and Green Card Update

Trump 2.0: Executive Orders and Business Impact

Trump's Immigration Picks

- **Current landscape:** multiple Executive Orders issued by Trump in January 2025 which demonstrate immigration enforcement is top priority and resources will be committed for enforcement and security measures.
- **Kristi Noem** – Secretary of Homeland Security
 - Former Governor of South Dakota
 - Leads Department of Homeland Security (DHS); oversees USCIS and ICE; advocate for strong border enforcement
- **Tom Homan** – Border Czar
 - Former Acting Director of ICE; oversees border security and enforcement
 - Strong emphasis on compliance
- **Stephen Miller** – Deputy Chief of Staff for Policy
 - Key drafter of Trump immigration policies in former Trump admin; goal of stricter enforcement of existing laws and curb illegal and legal immigration

Trump Executive Orders on Immigration

- Enhanced Vetting and Possible Travel Bans
 - No travel bans implemented to date
 - Implements enhanced security screening and vetting “to maximum degree possible” for visa applicants and those in the US if identified security risk
 - Within 60 days from EO, DHS must report any countries that may warrant “partial or full suspension” of admission along with individuals from countries admitted since 1/20/2021 and information regarding admissibility/removability
 - Revoked Biden’s EO 14012 – gave deference to prior USCIS decisions (i.e. H-1B extensions) and reduced RFEs and denials for immigration benefits
- **Business impact:** lengthier visa processing at consulates/embassies abroad; greater scrutiny of cases and increase in RFEs; more intensive/frequent background checks and security screenings

Trump Executive Orders on Immigration

- Limiting Birthright Citizenship
 - Deny U.S. citizenship to children born after 2/19/2025 whose mother is unlawfully present and father is not U.S. citizen or LPR; and
 - Deny U.S. citizenship to children born on or after 2/19/2025 whose mother is lawfully present, but in temporary status (i.e. H-1B, TN, F-1, etc.), and whose father is not U.S. citizen or LPR
 - 2/3/2025: Federal judge in Maryland issued nationwide preliminary injunction halting implementation - constitutional conflicts (14th Amendment) and legal precedent
- **Business impact:** Green card sponsorships may have to include children born in the U.S. to temporary visa holders (H-1B/H-4, etc.)

Trump Executive Orders on Immigration

- Restrictions on Humanitarian Parole and Temporary Protected Status
 - Humanitarian parole – must demonstrate “urgent humanitarian reasons for significant public benefits derived from presence in US”
 - TPS designations must be limited in scope and only so long as may be necessary
 - Trump 1.0: terminate TPS for Sudan, Nicaragua, Haiti, El Salvador, Nepal and Honduras; met with injunctions and court challenges
 - Trump 2.0: Venezuela
 - Employment authorization not provided to any unauthorized alien in US
- **Business Impact:** monitor TPS pending litigation and determine if other options exist to change status and remain in US; closely monitor employment authorization options, expiration dates (including auto-extensions), and comply with I-9 requirements

Trump Executive Orders on Immigration

- Homeland Security Task Force Creation
 - EO establishes “federal homeland security task forces” to give state and local law enforcement ability to remove undocumented individuals; prioritizes execution of immigration laws against inadmissible and removable aliens
 - INA Section 287g – ICE enforcement to local law enforcement with limited scope – 3 SC counties; ICE hiring increases
- **Business impact:** increased ICE enforcement actions (I-9 audits), site visits and raids to locate undocumented workers
 - Have action plan for ICE enforcement action to minimize workplace disruptions
 - Address culture of fear and speculation – deal with facts and issues at hand in reasonable manner and educate team

Trump Executive Orders on Immigration

- **Border Enforcement**
 - EO declaring national emergency at southern border – allocate use of military personnel and resources to secure border, resume border wall construction, suspends asylum processing and direct DOD to develop border plan
- **Gender Identity Restrictions**
 - EO stating U.S. government will have only two sexes; DHS will implement changes to ensure government-issued ID documents (passports, visas, Global Entry cards and forms) reflect either male or female; no third gender options
 - Likely legal challenge
- **America First Trade Policies**
 - Pres. memo requiring review of current US trade/economic policies (USMCA)
- **Business Impact:** tighter border enforcement and change in TN criteria

TPS Venezuela

- Temporary Protected Status (TPS) allows eligible foreign nationals to live and work in the US; granted to nationals of designated countries facing environmental disaster, armed conflict or other conditions
- 1/17/2025: former Secretary of Homeland Security Mayorkas announced consolidation of 2023 TPS designation (expiring 4/2/2025) and 2021 TPS designation (expiring 9/10/2025) and extension of both until 10/2/2026
- 1/28/2025: Secretary Noem vacated 1/17/2025 extension notice and reinstituted previously granted expiration dates
 - 2021 designations: expire 9/10/2025; will make extension or termination decision by 7/12/2025
 - 2023 designations: remain in status until 4/7/2025; no extension
 - No longer accepting VZ TPS re-registration applications; USCIS will cease processing of pending applications and refund fees
 - Will invalidate extensions/EAD already granted through 10/2/2026 (A12, C19)

Worksite Enforcement Updates

Why is I-9 Compliance Important Now?

- Immigration Reform and Control Act (IRCA) – federal law that prohibits employers from knowingly hiring, recruiting or referring for fee any alien not authorized to work.
- Liability is real
 - Violations may result in fines between \$281 - \$2,789 per I-9 violation
 - Knowingly hiring undocumented workers can result in penalties from \$698 - \$27,894 per violation
 - Criminal charges and penalties: up to 10 years and fines of up to \$250,000 for harboring undocumented workers
- Liability is avoidable
 - For many paperwork issues, ICE will not issue a fine if I-9 forms are corrected
- **Compliance is an issue** even if there are no foreign national employees

Employer Immigration To Do's

- Incorporate an immigration compliance policy
- Assess your exposure:
 - Conduct I-9 audits and properly correct errors
 - Are you in an “at risk” employer? – Previously fined, agriculture, hospitality, food processing, and use of staffing agencies
 - Is your electronic I-9 system compliant?
- Conduct training on I-9 and E-Verify
- Purge documentation outside the retention period
- Seek legal counsel if audited!!

Employer Preparation for ICE Arrival

- Prepare internal policies/procedures on handling ICE visit/raid and train employees
- Appoint person to interact with ICE and respond on behalf of district
 - Contact legal counsel
- Confirm identification of agent
- Determine purpose of visit: I-9 audit, arresting employees
 - Review documents including warrants and subpoenas
 - Be cooperative but do not voluntarily provide information or documents
 - Keep accurate record of ICE visit; retain copies of all documents presented
 - Minimize negative PR

I-9 Software Guidance

- Issued by ICE and Immigrant and Employee Rights Section within DOJ in December 2023
- Regulations on electronic I-9 systems issued in 2006 but provide little guidance
- Guidance highlights:
 - System must be allowed to leave optional/unused fields blank
 - Must permit entry of any acceptable documentation (including receipts)
 - Must allow for corrections rather than a completely new I-9
 - Must uniquely identify each person accessing/correcting an I-9
 - No pre-population permitted
 - System must not fail to document changes in an audit trail

Visa and Green Card Update

Key Immigration Considerations for Company

- Short and long-term immigration goals: purpose and length of stay in US
- Corporate structure and affiliations
- Nationality and citizenship of individuals coming to US
- Size of investment and anticipated revenues
- Status of business plan if new enterprise
- Qualifications of individuals (degrees, skills)
- Requirements of position (duties, degrees, experience, training)
- Prior immigration history (visas types, length of time in US, etc.)
- Family members
- Timing

H-1B Visas and Cap

- H-1B: temporary work visa used to hire individuals in “specialty occupations”
 - Examples: Engineer, Software Developer, Marketing Manager, Director of Nursing
- The Immigration Act of 1990 placed a “cap” on the number of foreign workers authorized to work in the US annually in H-1B status.
 - 65,000 “Regular Cap” - Bachelor’s degree
 - 20,000 “Master’s Cap” - US Master’s degree or higher
- Some employers and foreign nationals are exempt from the H-1B CAP

H-1B CAP Registration/Lottery

USCIS utilizes an online registration system to conduct H-1B CAP selections.

- Previously, petitioners were required to prepare and file a complete H-1B CAP petition and then were notified of selection
- Under the new process, petitioners are only required to submit a registration online and pay the \$215 registration fee
- Number of eligible registrations down dramatically in recent years from 780,000+ in FY2024 to 470,000+ in FY2025
- Strategy point: who should company register?

Cap Fiscal Year	Total Registrations
2021	274,237
2022	308,613
2023	483,927
2024	780,884
2025	479,953

Selected in H-1B CAP

- Following registration, employers and attorneys receive emails from USCIS notifying as to status of registration
 - H-1B filing period runs from March 7, 2025 to March 24, 2025
 - Additional selections are possible but not guaranteed
 - If selected, employer files full H-1B petition within 90 days

Beneficiary Confirmation Number [REDACTED]		Case Type H-1BR - H1B REGISTRATION
Received Date 03/18/2022	Priority Date	Prospective Petitioner [REDACTED]
Notice Date 03/26/2022	Page 1 of 2	Beneficiary [REDACTED]
[REDACTED]		Notice Type: Registration Selection
<p>Your company, [REDACTED], with an Employer Identification Number of [REDACTED], submitted a registration on behalf of [REDACTED] (Date of Birth: [REDACTED]) for possible selection toward the FY2023 H-1B numerical cap projections.</p> <p>This registration was selected. The Beneficiary Confirmation Number is [REDACTED].</p> <p>This registration was selected toward the number projected as needed to reach the advanced degree exemption (master's cap). Based on this selected registration, your company is eligible to file a corresponding H-1B petition between 04/01/2022 and 06/30/2022 at the following location:</p> <p><u>California Service Center</u></p> <p>Please see the "Direct Filing Addresses for Form I-129, Petition for a Nonimmigrant Worker" webpage (https://www.uscis.gov/i-129-addresses) for the appropriate address for the service center identified above that matches your petition type and mail carrier.</p>		

TN Category for Canadian and Mexican Professionals

- Must be citizen of Canada or Mexico
- Coming to U.S. to work in profession listed on USMCA schedule
 - **Example:** Engineer, Mgmt. Consultant, Scientific Technician/Technologist, Registered Nurse
- Generally need Bachelor's degree in field with limited exceptions
- Canadians apply at border; Mexicans apply at U.S. Consulate/Embassy
- **3-year validity; renewable indefinitely**
- Employer-specific; can hold multiple TNs
- Recent TN litigation; TN category could be modified by Trump administration

L-1A and L-1B Status – Intracompany Transferees

- Example: Japanese parent company has U.S. office and wants to transfer manager, executive or professional working in Malaysia office to U.S. entity
- Must be corporate relationship between the entities - parent, subsidiary, branch or affiliate
 - Blanket L petitions – streamlined process used for high volume of transfer activity; carefully evaluate corporate changes and update blanket petition as appropriate
- Employee must have either managerial, executive or specialized knowledge position while working abroad and in U.S.
 - Example: Project Manager, Electrical Engineer, Purchasing Specialist
- Employee must have worked abroad for at least 1 year in prior 3-year period
- Entity must conduct business in at least 1 other country beside U.S.
- **Maximum stay:** 5 years (professionals – L-1B); 7 years (managers/executives – L-1A);

E-1 and E-2 Visas – Treaty Trader/Investor

- Example: German parent company makes substantial investment in its U.S. subsidiary, and German national wants to work for U.S. entity
- Must be requisite treaty between U.S. and foreign country
- **Same nationality** – company and employee (i.e. both German)
- Substantial investment in U.S. entity – at least \$100K (inventory, equipment, purchase of building, etc.)
- U.S. entity must be active, operating enterprise
- Employee must fill manager/executive or essential skills position
 - Example: Product Quality Control, Purchasing Specialist
- **Caution:** change in corporate structure (i.e. merger, acquisition, etc.) can change nationality and invalidate E status

Site Visits

- Site visits are usually conducted by the Fraud Detection National Security Directorate (FDNS) or Homeland Security Investigations (HSI).
- A company consents to a site visit when it files a petition for a visa on behalf of an employee. Employers are always expected to cooperate.
- There is no notice of a site visit, and the agent conducting the visit is not required to produce a subpoena or other formal document. However, site visits can be rescheduled under certain circumstances.

Site Visits: How to Prepare

- Keep complete copies of visa petitions for active foreign national workers on site in a safe place.
- Make sure relevant management and the foreign national are aware of the contents of the visa petition. If everyone involved in the petition has knowledge about its contents, then the petition is more likely to accurately reflect the reality at the worksite.
- Know that any material changes in circumstances after visa approval may require an amended petition.
 - For example, if the foreign national takes a different position in a different department, it may be prudent to notify USCIS of the change. Changes in the employer's circumstances, such as company ownership changes, worksite location changes, etc., may also require attention.

Green Cards

Green Card Process (EB-1, EB-2 and EB-3)

PERM Labor
Certification or
Bypass

I-140 Immigrant
Visa Petition

I-485
Adjustment of
Status or
Consular
Processing

Assess Green Card Backlogs

- Greens cards (Lawful Permanent Residents) can be used as a long-term strategy for temporary visa holders who want to live and work in the US on a permanent basis; there are both family and employment-based green card strategies
- For most green card petitions, a priority date is assigned based on the PERM filing date; if PERM bypassed, priority date determined by I-140 petition filing
- Consult monthly Visa Bulletin and USCIS processing times to assess delays
- Priority date determines how quickly the employee will progress through the green card process
 - Longer delays for Indian and Chinese nationals due to green card backlogs
 - 7% per-country cap
- Strategy discussions about green card timing and succession planning

Questions?



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