Immigration Developments Under the Trump Administration: Recapping the First Eight Months

By John Smart

At the DFW Association of Corporate Counsel conference last February, I attempted to make a semi-educated guess at how the change in presidential administrations would affect employment-based immigration. We are now approximately eight months into the President Trump four-year term so let's take a look at what has happened thus far and evaluate the accuracy of those predictions.

H-1B Visa Developments

In the last two months of the Biden administration, U.S. Citizenship and Immigration Services (USCIS) issued new H-1B rules addressing a number of areas that had been the subject of disputes and litigation relating to the definition of "specialty occupation" and expanding eligibility in relatively minor ways, e.g., expanding the types of research institutions considered exempt from the H-1B cap, allowing employers to accept multiple degree fields for particular jobs and allowing employees to hold an ownership interest in their sponsoring company. To date, none of these changes have been rolled back. This would be encouraging for immigration supporters but for one recent development.

On September 19, President Trump signed a proclamation requiring a payment of $100,000 for any new H-1B petition, effective September 21. As justification for the proclamation, the President attempted to document what he characterized as a history of H-1B program abuse by IT firms and an adverse impact on U.S. college graduates seeking new employment. Regardless of the accuracy of such claims, the proclamation resulted in massive panic and confusion among H-1B visa holders and sponsors. The panic subsided somewhat when it became clear that the fee did not apply to those persons who held or had applied for H-1B status prior to the effective date. Similarly, the fee does not apply to those applying to extend existing H-1B status or to those already in the U.S. seeking a change of status to H-1B. The fee requirement also ends on the one-year anniversary of the proclamation. In effect, the proclamation results in the potential suspension of the H-1B program for new candidates in 2026, although it indicates that the H-1B lottery will go forward next year. At that time, the Secretary of State, the Attorney General, the Secretary of Labor and the Secretary of Homeland Security shall

submit a joint report to the President with their recommendation on whether to extend the restrictions on entry.

Most observers agree that few employers would be willing to pay such an exorbitant fee in order to employ a new software developer, much less say a high school teacher. We will have to wait until April to determine whether this fee will have a huge impact on the number of H-1B workers. Meanwhile, the fee is being challenged in at least two lawsuits. Back in February, I predicted that the cost of H-1B petitions would likely rise, but I certainly didn't foresee a fee of this size and impact.

Finally, the proclamation promises more changes to come, including changes to the prevailing wage levels and efforts to prioritize workers with higher wage levels and skills. I think it's fair to say that President Trump is not yet finished with his H-1B reform efforts.

L-1B Developments

The current administration has yet to make any changes to the L-1 visa program. This is the best news of the update.

Travel Bans

The previous Trump administration issued several bans on travel to the U.S. from countries that were viewed as supporters of terrorism. Accordingly, it wasn't much of a shock to see a return of a new group of travel restrictions. In June 2025, the Trump administration announced new travel restriction affecting 19 countries, including 12 nations subject to a full ban and seven given partial restrictions. The former group includes Afghanistan, Myanmar, Chad, Republic of Congo, Equatorial Guinea, Eritrea, Haiti, Iran, Libya, Somalia, Sudan and Yemen, while Burundi, Cuba, Laos, Sierra Leone, Togo, Turkmenistan and Venezuela make up the latter. The restrictions are subject to exceptions for U.S. permanent residents, dual nationals, diplomats and government officials, participants in major sporting events (*e.g.*, World Cup, Olympics) and individuals with pre-existing visas issued before June 9. Many of the chosen countries have a history of overstays, while others have internal conflicts often involving terrorism or anti-U.S. activities. If you were thinking of vacationing in Chad, you will need to make other plans since Chad has retaliated by banning visitors from the U.S.

TPS Programs

At the time of the ACC conference in February, the Trump administration has just announced termination of the Temporary Protected Status designations for Venezuela. This announcement was followed by a series of lawsuits challenging the termination, followed by injunctions, appeals, and ultimately Supreme Court action allowing the termination to have immediate effect, although litigation continues relating to the 2023 Venezuela designation. Since February, the administration has also terminated TPS designations for Afghanistan (for a designation that was set to expire on May 20), Cameroon, Nepal (August termination date initially stayed by California federal district court, but later reversed by 9th Circuit), Honduras and Nicaragua (termination initiated enjoined, but allowed to take effect after appeal), and Syria. Multiple attempts to terminate the designation for Haiti have been blocked by federal courts, allowing Haitian EADs to continue as valid until Feb. 3, 2026.

Citizenship/Naturalization

Campaign promises made before the 2024 presidential election made it easy to predict that President Trump would be attempting to change the long-standing rule of U.S. citizenship by birth, which originated with the passage of the 14th Amendment to the Constitution in 1868. The amendment was needed at that time to establish that the children of enslaved people born in the U.S. would be considered American citizens. In 1898, the U.S. Supreme Court decided the case of *U.S. v. Wong Kim Ark* ruling that birthright citizenship applied to the child of Chinese immigrants born in San Francisco. However, it was not until the passage of the Indian Citizenship Act of 1924 that citizenship was expressly granted to Native Americans born on reservations.

President Trump made good on his campaign promise on his first day in office, signing Executive Order 14160, which seeks to end automatic citizenship to infants born on or after Feb.19, 2025, if neither parent is a U.S. citizen or permanent resident. The EO is not retroactive, so it does not attempt to revoke citizenship for children born prior to that date. The EO was greeted by a slew of lawsuits. At present, at least four federal judges have enjoined the EO as contravening the 14th Amendment. These injunctions have been appealed by the administration to the Supreme Court. Twenty-four states have filed briefs with the Supreme Court supporting the order, claiming that it is aligned with the original intent of the 14th Amendment. This important issue will almost certainly be resolved by the Supreme Court during its 2025-26 term. Most legal experts believe that overturning birthright citizenship would require a Constitutional amendment ratified by 2/3's of the

states. Yet this Supreme Court has shown that it is not hesitant to reverse what it views are wrongly decided precedent. Whether *Wong Kim Ark* is extended to cover the children of foreigners living in the U.S., legally or without documentation, remains to be seen.

Government Shutdown

As I write this update, we are now entering the ___ week of the government shutdown. While most of our daily lives remain little affected by the shutdown (except for those who actually work for the government), the shutdown has a dramatic effect on immigration. While USCIS continues to operate and adjudication petitions, the closure of the Department of Labor's FLAG portal has severe consequences. Specifically, applications for permanent labor certification are completely stalled, worsening the already lengthy processing times for those seeking permanent residency through employer sponsorship. Additionally, the DOL is not certifying labor condition applications during the shutdown, making it impossible to apply for extensions of H-1B status or change of employer petitions, even as individual deadlines to file arise. This results in a great deal of consternation for foreign workers, their employers and immigration counsel. USCIS has indicated that it will consider the government shutdown in determining whether to treat late-filed petitions as timely, yet no guarantees have been made.

Conclusion

Regardless of the outcome of EO 14160 or how long the government shutdown continues, there is one thing that is virtually certain. The field of immigration law will continue to be both exciting and challenging during the next 39 months.

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