

# SCOTT LEGAL SERVICES, P.C.

The Law Firm For Entrepreneurs, Business Owners & Investors

Ian E. Scott

110 East 59<sup>th</sup> Street, Suite 25

New York, NY 10022

---

TELEPHONE: (212) 223-2964

[www.legalservicesincorporated.com](http://www.legalservicesincorporated.com)

[iscott@legalservicesincorporated.com](mailto:iscott@legalservicesincorporated.com)

## How Will the Immigration Reform Proposals

### Impact Businesses & Employees?

Much of the debate surrounding immigration reform has centered around providing a pathway to Citizenship for the 11 million undocumented people in the country. While a significant part of the legislation is focused on this area, the current Senate proposals are a comprehensive revamp of many aspects of immigration law including modifications that will impact employees and businesses. This article is a summary of the current immigration reform proposals with a focus on how the proposals will impact businesses and employees.

#### Changes to Employment Based Green Cards

A number of changes have been proposed to reduce long wait times for some employment based green card categories, and to make a sufficient number of visas available for highly skilled workers that are in high demand in the U.S.. The current immigration system sets a cap on the total number of visas issued by category (EB-1 through EB-5) and then further limits this by country. For example, country-specific limits on employment-based immigrant visas have caused significant wait times (in excess of 10 years) for some applicants from countries like China and India. These wait times would be eliminated if the bill becomes law and this will present an opportunity for employment based green cards from applicants from these two and other countries which in the past has been extremely difficult.

The reform proposals also eliminate cap amounts in some other visa categories. For example, highly skilled and exceptionally talented immigrants are not subject to a cap. In addition, candidates with advanced degrees in Science, Technology, Engineering & Math (STEM) fields from U.S. universities will also not be subject to the cap. STEM graduates would also be exempt from the labor certification requirement which would make it much easier for them to get a green card after graduation.

#### The Creation of New Entrepreneur Visas

Current immigration law has two visas that have been developed to encourage foreign nationals to start a business in the U.S. and hire U.S. workers. These are the E-2 Investor Visa and the EB-5 Visa. To find out more about the E-2 visa click [here](#). To find out more about the EB-5 visa click [here](#). As another attempt to attract foreign investment and create jobs, the bill creates a nonimmigrant investor visa (this is not a green card), or X visa. The X visa is geared towards entrepreneurs whose businesses have attracted at least \$100,000 in investment, or have created three jobs, and generated \$250,000 in annual revenue.

The bill also creates an EB-6 immigrant investor visa that leads to a green card. This visa is for entrepreneurs who have a significant ownership in a U.S. business and have had a significant role in the start-up of the business. In order to qualify for this visa, the business must create five jobs and must have received at least \$500,000 funding, or created five jobs and generated \$750,000 in annual revenues in the prior two years. The E-2 and EB-5 Visas will still be available to investors.

### **Undocumented Workers Will Obtain Work Authorization**

Although a violation of tax and immigration law, many employers hire workers “under the table.” If this bill becomes law, the 11 million undocumented immigrants will be able to apply for Registered Provisional Immigrant (RPI) status, and work authorization, if they have been in the U.S. since December 31, 2011, have not been convicted of a felony or three or more misdemeanors, pay their assessed taxes, pass background checks, and pay a penalty, among other requirements. As these workers are currently off the books, some employers do not comply with minimum wage and/or other department of labor requirements and the proposals would change this. Moreover, in order to get RPI status, an undocumented worker would have to pay their back taxes and this would result in them telling both immigration officials and the Internal Revenue Service (IRS) who they had worked for. This may result in a flood of fines and/or other penalties against employers. You should note that while some immigration violations are only subject to fines, failure to pay payroll taxes is tax evasion which is a felony.

### **Introduction of a Merit-Based Program for Green Cards**

One widely anticipated feature of the new immigration proposal is that it creates a new merit system that is based on points accrued through education, employment, family ties and other qualifications. The premise here is that the higher you score, the more chances that you would have to get a green card. This proposal is similar to current legislation in other countries that link permanent residence applications to features such as length of time the person has been in the country, language ability, education and employment. This could open up job availabilities for highly qualified workers with strong educational backgrounds.

### **New Visa for Lower Skilled Workers (Agricultural and Non Agricultural)**

The current immigration proposals also create a program that allows foreign agricultural workers to enter the U.S. to work for employers designated by the Department of Agriculture. Employers must pay the W workers a wage determined by the department of labor and meet other conditions. Temporary agricultural workers have been one of the areas where employers and lobby groups have expressed a keen interest in repair as many farm workers rely on seasonal workers.

The bill also creates a new W visa for less-skilled, non-seasonal, nonagricultural workers, such as workers in construction and restaurant industries. The program will be closely monitored and supervised by a new

SCOTT LEGAL SERVICES, P.C.

IAN E. SCOTT, ESQ.

(212) 223-2964

<http://www.legalservicesincorporated.com>

entity, the Bureau of Immigration and Labor Market Research, which will mandate what constitutes a shortage occupation. Like the agricultural W visa, employers must pay the W workers the actual wage or the prevailing wage for the occupation, and follow other department of labor requirements. As this is a highly controversial area where many feel foreign nationals are taking U.S. jobs, a complaint process will be established to report violations, and penalties will be assessed for abuse.

### **Employers Will Be Required to Use E-Verify**

E-Verify is an internet-based system that allows businesses to check whether or not an employee is lawfully permitted to work in the U.S.. The system is not currently mandatory and as such less than 1% of employers in the U.S. are enrolled in E-Verify.

The new bill expands E-Verify and makes it mandatory for all employers over a period of five years. The bill requires identity verification through the use of enhanced fraud-proof documents to allow employers to verify an individual's identity. In addition, a mandatory entry and exit system will be implemented at all air and sea ports to help ensure that foreign nationals are leaving the U.S. when they are supposed to.

If you are considering moving to the U.S. or acquiring an Investor or Entrepreneurial Visa, contact Scott Legal Services, P.C.. For more information on these and other immigration Visas click [here](#). You can also call us at 212-223-2964 or email us at [iscott@legalservicesincorporated.com](mailto:iscott@legalservicesincorporated.com).

Also, click [here](#) for your free [White Paper](#) that summarizes the top 10 Immigration Questions and Answers.