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Business Immigration Update: Ushering in Reform

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EXPAND YOUR EXPECTATIONS™

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- A Guide to S. 744
 - DHS/Immigration Response to Supreme Court Ruling on DOMA
 - Immigration Enforcement Overview

What is S. 744

The “Border Security, Economic Opportunity, and Immigration Modernization Act,” or S. 744, is a broad-based proposal for reforming the U.S. Immigration system.

What is the Bill's Procedural Standing?

- Introduced to Senate April 16, 2013
- 301 amendments proposed by committee members
 - one-third considered
 - 92 incorporated
- Passed the Senate on June 27, 2013 by 68-32 vote

What Happens Now That S. 744 Has Been Passed?

How is the bill organized?

- Broken into five large sections
 - Border Security (Title I)
 - Immigrant Visas (Title II)
 - Interior Enforcement (Title III)
 - Reforms to Nonimmigrant Visa Programs (Title IV)
 - Jobs for Youth (Title V)

Title I

Border Security

Border Enforcement and Triggers

- What resources are currently dedicated to border security?
 - Annual budget has increased since 1993
 - \$363 million to \$3.5 billion
- What additional resources does the bill dedicate to border security?
 - 38,405 full-time border patrol agents
 - Electronic exit system
 - 700 miles of fencing
 - Mobile surveillance
 - Aircraft and radio communications
 - Additional Border Patrol Stations and training
 - Additional prosecutors, judges and staff
 - Increasing prosecutions of illegal border crossings

What goals must be reached before the undocumented immigrants can gain legal resident status?

- Primary Purpose: provide path to Lawful Permanent Residency for existing undocumented population via the new Registered Provisional Immigrant (RPI) program
- Southern Border Security Strategy must be deployed and operational
- Southern Border Fencing Strategy implemented and completed
- Mandatory employment verification implemented
- Electronic exit system implemented
- At least 38,405 full-time Border Patrol agents deployed along southern border

Title II

Immigrant Visas

Purpose

- Creates Registered Provisional Immigrant (RPI) program for undocumented immigrants
- Provides visas to erase backlog
- Eliminates some family-based immigration programs
- Creates new merit system that is based on points
 - Education
 - Employment
 - Family ties

Registered Provisional Immigrant Program

- Allows undocumented immigrants to apply for Registered Provisional Immigrant (RPI) status:
 - In U.S. since December 31, 2011
 - Not convicted of felony or three or more misdemeanors
 - Pay assessed taxes
 - Pass background checks
 - Pay application fees
 - Pay \$1,000 penalty (can be paid in installments)
 - Additional requirements may apply

When can undocumented immigrants apply for RPI status?

- If S. 744 becomes law, there will be a delay between enactment and implementation
- Bill gives government one year to publish regulations governing the program

How long does RPI status last and what follows?

- Initial grant of RPI status good for six years.
- May be renewed for six years dependent on employment status and/or income verification
- Eligible for Lawful Permanent Residency (“LPR”) after ten years
- Eligible for Naturalization after three years of LPR

DREAM ACT and Agricultural Workers

- Version of DREAM ACT incorporated into RPI program
- DREAMERS have accelerated path to permanent legal residency status
 - Five years compared to ten
- Agricultural workers also have special path
 - Blue card
 - 575 hours or 100 work days of agricultural employment in 2 years
 - Pay penalty
 - Pass background checks
 - Five years for Lawful Permanent Residency
 - Additional five years for naturalization

Legal Immigration Reforms

- Outlines reforms and new components of immigration system
- Addresses backlogs and immigration levels
- Functions alongside family-based and employment-based immigration programs
- Creates new two track merit-based point systems
 - Educational credentials
 - Work experience

Merit-based Point System

Track 1

- Allows foreign nationals to obtain Lawful Permanent Residence
- Gain points based on:
 - Skills
 - Education credentials
 - Employment history
- Between 120,000 and 250,000 visas allocated each year based on points

Track 2

- Allocates visas to pending applications over 7 year period

Family-based Immigration

- Petitions for spouses and children of Lawful Permanent Residents will be considered immediate relatives
 - Exempts them from visa caps
 - Increases eligibility for green cards
- Removes immigrant category of siblings
- Visas no longer available to married sons or daughters of U.S. citizens over age of 30

Employment-based Immigration

- Primary changes:
 - Elimination of country-specific limits on visas
 - Highly-skilled/exceptionally talented immigrants exempted from world-wide cap
 - STEM graduates exempt from labor certification requirement

Integration Into Society

- S. 744 helps facilitate:
 - Language acquisition
 - Civic engagement
 - Financial self-sufficiency
 - Upward economic mobility
- Creates three new organizational structures:
 - Office of Citizenship and New Americans
 - Task Force on New Americans
 - United States Citizenship Foundation

Nonimmigrant Agricultural W Visa Program

- Creates new nonimmigrant, less-skilled W visa agricultural worker program
- Replaces H-2A agricultural worker program

Other Immigrant Visa Program

- Modified and made permanent:
 - EB-5 investor visa program
 - Conrad-30 J Waiver program

Title III

Interior Enforcement

E-Verify

Internet-based system allows businesses to determine eligibility of employees to work in United States by comparing information from employee's Employment Verification Form I-9 to U.S. Government records.

- E-Verify will be expanded
- Will be mandatory for all employers over five-year period
- Identity verification through enhanced fraud-proof documents
- Employers required to confirm identity of new employees within 3 days
- Mandatory entry and exit system
- Does NOT allow creation of national identification card

E-Verify: Mandatory when?

- E-Verify system must be implemented by employers within five years
- Employers with more than 5,000 employees must use it no later than two years after publication of regulations
- Employers with more than 500 employees must use it within three years
- Agricultural employers allotted four years

Title IV

Reforms to Nonimmigrant Visa Programs

H-1B and L-1 Visas

- Short-term visas for foreign workers who do not intend to stay in U.S. permanently
- Science, Technology, Engineering and Math (STEM) workers critically needed
- H-1B allows degreed workers to temporarily fill specialty occupation
- L-1 allows worker for multinational employer to assist in operations in the U.S.

H-1B and L-1 Visas: Expected Changes from S. 744

- Increase in annual H-1B visa cap
- Increase in H-1B wage requirements
- Requires employers to make significant efforts to recruit U.S. workers
- Prohibits employer from having more than 50% H-1B or L-1 workers
- Easier for H-1B workers to change employers
- Limits employers ability to place L-1 workers with other employers

W Non-agricultural Visa Program

- Creates W nonimmigrant visa for less-skilled, non agricultural workers
 - Janitorial
 - Hospitality
- Admitted for three-year period
- Must work for registered, non-agricultural employer in registered position
- Supervised by new entity: Bureau of Immigration and Labor Market Research
- Annual cap for visas will fluctuate between 20,000 and 200,000
- Must pay higher of actual wage or prevailing wage for occupation
- Employers required to recruit U.S. workers

W Non-agricultural Visa Program – How it differs

- Allows workers to leave jobs to work for other registered employers
- Creates a pool of labor responsive to labor market needs
- Workers could eventually apply for LPR
- First time workers could be allowed to transition to Permanent Residency Status without employer sponsorship

Investor Visas – X Visa and EB-6

X Visa

- For entrepreneurs whose business has attracted \$100,00 or more in investment, or created at least three jobs in two years
- Aims to attract investment and create jobs in U.S.
- Creates nonimmigrant investor visa
- Temporary nonimmigrant visa granted for three years

EB-6

- For entrepreneurs who have significant ownership in U.S. business and significant role in start-up of business
- Must have created at least five jobs and no less than \$500,000 in venture capital; or
- Created five jobs and generated \$750,000 in annual revenues in two years

Other nonimmigrant visas

- F-1 student visa holds can have dual intent
 - Intent to stay temporarily or permanently
- Nonimmigrant retiree visa
 - Foreign national over 55 who does not work
 - Must have health insurance
 - Must have \$500,000 to purchase a residence
- Canadian retiree tourist visa
 - Over 55 who does not work
 - Must maintain residence in Canada
 - Can enter into U.S. for up to 240 days

Other nonimmigrant visas

- S. 744 bill modifies H-2B visa
 - Requires H-2B workers paid prevailing wage or actual wage paid to U.S. workers
 - Requires that employers attest they do not displace U.S. workers
 - Allows employees of multinational corporations to enter the U.S. for 90 days to oversee operations for 180 days for leadership and development training

Title V Jobs for Youth

Youth Jobs Fund

- Establishes a fund providing summer and year-round employment opportunities for low-income youths 15-25 years of age
- Provides a grant to states with approved employment plants that comply with labor laws

QUESTIONS?