

Obama Grants Immigration Relief to Some

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On November 20, 2014, President Obama announced that he would take executive action to provide temporary relief to approximately 5 million undocumented workers. Frustrated by Congress's failure to enact immigration reform, the president announced that he would use his executive authority to provide temporary relief from deportation to certain classes of undocumented immigrants.

WHAT IS EXECUTIVE ACTION?

Executive action is not a new law. It is the president's interpretation of existing law. Several years ago the president asked the Department of Homeland Security to examine the existing law and provide him with a list of options available to him to improve the immigration system and provide relief to many of the long-term undocumented workers within the US. Previous presidents, including Reagan, George H.W. Bush and Clinton, have used executive action to extend immigration relief to classes not specifically covered by existing law.

WHAT IS PROSECUTORIAL DISCRETION?

In 2011 the administration announced that it was changing its approach to the removal and deportation of undocumented immigrants. Instead of exerting equal effort to remove all undocumented individuals, it would focus its limited resources on removing repeated immigration violators, those with criminal records, and those who posed a danger to the United States. While undocumented immigrants apprehended in the US or denied a benefit had previously been put into removal or deportation proceedings, Immigration and Customs Enforcement (ICE) was given a series of factors to consider when deciding whether to put someone into the backlogged immigration court system. For the first time ICE was encouraged to leave certain individuals alone if they were under or over a certain age, had been here in the US for an extended period of time, and posed no danger to the US.

WHAT IS DEFERRED ACTION?

In 2012 the president extended his executive action to include a program known as DACA, which granted deferred action to certain children brought here illegally by their parent when they were under the age of 16. These childhood arrivals were viewed as not being culpable in breaking the immigration laws. While the president doesn't have the authority to grant these individuals legal residence, he does have the authority to defer or delay their removal from the US. Under DACA, individuals' removal is deferred for two years, and they are granted work authorization during the interim.

COMPREHENSIVE IMMIGRATION REFORM

In 2013 the US Senate passed a comprehensive immigration bill with strong bipartisan support that would provide a pathway to legalization for undocumented individuals. Unfortunately, Republicans in the House of Representatives have blocked this bill from coming to the floor for a vote. More than 500 days have now passed without the House bringing to a vote any bill addressing immigration reform.

PRESIDENT OBAMA ACTS

Frustrated by the inability of Congress to pass immigration legislation, the president on November 20 unveiled a series of executive actions that he intends to implement. Among these actions are the following:

EXPANSION OF DACA

To qualify for DACA, currently an applicant must:

- Be under the age of 31 as of June 15, 2012;
- Have entered the US before June 15, 2007;
- Have been younger than 16 at the time of arrival; and
- Meet certain specific educational and public safety criteria.

On November 20 the president announced that the class of eligible individuals would be expanded by removing the age restriction. Thus, individuals brought here as children who are now over the age of 31 will soon be able to apply. It is anticipated that approximately 1.5 million will be eligible. The entry cutoff will also be advanced from June 15, 2007, to January 1, 2010. Lastly, a grant of deferred action will allow an individual to remain and work in the US for a period of three years, instead of two as previously provided. Filing for this expanded form of relief will not begin until late February 2015.

EXPANDING DEFERRED ACTION TO PARENTS OF USCS AND LPRS

The president also announced that deferred action and work authorization would be granted to certain parents of children who are US citizens and lawful permanent residents. To qualify for this benefit, individuals must:

- As of November 20, 2014, have a son or daughter who is either a US citizen or lawful permanent resident ("green card" holder);
- Have resided in the US continuously since before January 1, 2010;
- Be physically present in the US as of November 20, 2014, and at the time of making application for benefits; and
- Be undocumented and not fall within the category of individuals who are "enforcement priorities."

It is expected that approximately 3.7 million will be eligible to file for this form of relief. Applications will not be accepted until May 2015.

WHAT IS THE NATURE OF THE RELIEF BEING GRANTED?

Individuals granted deferred action under the president's executive action do not become legal residents of the United States, nor will they receive green cards. The program does not lead to citizenship. Individuals are merely granted "deferred action," meaning that the government will not seek to deport or remove them for a period of three years and will also provide them with the right to work. While current DACA holders are beginning to renew their deferred-action status for a second two-year period, there is no guarantee that deferred action will be embraced by future presidents; thus, the grant of new cases could end once Obama leaves office on January 20, 2017.

CAN THE PRESIDENT REALLY DO THIS?

Most constitutional scholars believe that the president has the authority to move forward with this program, based on precedent and the fact that no permanent benefit is being extended. However, certain members of Congress are likely to challenge the president's constitutional authority, and this could ultimately end up at the Supreme Court. Additionally, Congress might seek to pass a law that would block the president's ability to implement this law, possibly by denying him funding through the budgetary process.

SHOULD I FILE FOR THIS RELIEF?

Those who are eligible are best advised to proceed with caution. At this point we do not know whether Congress will find a way to block the program before implementation. Nor do we have guidance as to how, exactly, the program will be implemented. While it is anticipated that a variation on the form currently used for DACA applicants will be used for both the expanded DACA program and the Deferred Action for Parents (DAP) program, no forms exist yet, nor will anyone be able to file until sometime next year. To apply, an individual must disclose his or her name and address. There is obviously concern about what happens if a future president discontinues the program. Could he or she use the list of those granted deferred action to immediately start removing and deporting people? Most think this is unlikely, but certainly one must weigh the benefit of this program against the risk.

WHAT ELSE DOES THE PRESIDENT'S EXECUTIVE ACTION COVER?

The expansion of DACA and the new DAP program offer relief to the largest number of individuals. However, the president's announcement covers a number of other initiatives, including a reclassifying of the administration's removal priorities, the discontinuation of the Secure Communities Program and its replacement with a new Priority Enforcement Program (PEP), and an expansion of the Provisional Waiver Program (previously restricted to the spouses and children of USCs) to include the spouses and children of lawful permanent residents. There are also some special provisions that apply to skilled workers, entrepreneurs, and those in the US on advance parole.

BEWARE OF NOTARIOS

Individuals who would like to obtain relief under the president's executive action should be most careful of those who might seek to take advantage of them. These include "notarios," individuals who claim to be lawyers in their home country, and others who are just seeking to make a quick buck. Many will make big promises, overcharge for filing basic applications, and often just take the money and run. Worse yet, some will file applications for individuals containing false information that may come back to haunt the applicants in the future.

DO I NEED A LAWYER?

Consulting a qualified immigration attorney can help prospective applicants make sure that they meet eligibility requirements, since application for deportation relief does not provide confidentiality. Applicants should remember that everything disclosed in an application filed with USCIS can be used against them in the future.

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