

National Foundation for American Policy

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Contact: Stuart Anderson, 703-351-5042, press@nfap.com

New Reports: Major Organizations Call on Obama Administration to Improve Employment-Based Immigration, Naturalization Policies

Reports Recommend Agencies Keep Promise of Regulatory Overhaul

Arlington, Va. – The Obama Administration should follow through on its promise to provide regulatory relief on employment-based immigration and naturalization policies, conclude two new reports released by the National Foundation for American Policy, an Arlington, Va.-based policy research group.

The reports – “Reforming America’s Regulations and Policies on Employment-Based Immigration” and “Reforming the Naturalization Process” – feature dozens of recommendations from business, religious, refugee and immigration organizations, as well as experienced legal experts. Authors of the recommendations come from organizations that include the U.S. Chamber of Commerce, the American Council on International Personnel, the American Immigration Lawyers Association, Immigration Works, Immigration Voice, the U.S. Conference of Catholic Bishops, the National Immigration Forum, the Hebrew Immigrant Aid Society and others. The research was made possible by a grant from the Carnegie Corporation of New York. The statements made and views expressed are solely the responsibility of the authors.

The reports can be found on the NFAP website at www.nfap.com.

“Recognizing that legislative solutions are difficult, the U.S. Chamber is also working administratively, to promote regulatory and policy reforms at the relevant federal executive agencies,” said Randel K. Johnson, senior vice president for labor, immigration and employee benefits at the U.S. Chamber of Commerce. “While not replacing the need for comprehensive reform of the nation’s controlling immigration laws, the administrative actions described in the NFAP’s report will lead to real improvements in the immigration system.” Mr. Johnson appeared on the press call releasing the studies and co-authored the lead article in the study on employment-based immigration.

“With efforts to reform immigration currently stalled in Congress, administrative and regulatory relief may offer the best chance to make U.S. companies more competitive globally and in making improvements in other areas, including naturalization,” said Stuart Anderson, NFAP’s executive director and formerly head of policy and counselor to the Commissioner of the Immigration and Naturalization Service from August 2001 to January 2003. “It’s possible for the Obama Administration to make reforms that are not controversial but will provide genuine regulatory relief and improve the lives of many people mired in an immigration system in need of reform,” said NFAP’s Stuart Anderson.

In the report on employment-based immigration, the question is asked: “Does President Obama realize his immigration agencies are making American companies less competitive?” In a January 2011 executive order and a subsequent *Wall Street Journal* article (January 18, 2011), President Obama announced a “government-wide review of the rules already on the books to remove outdated regulations that stifle job creation and make our economy less competitive.” The NFAP reports conclude that to be meaningful, such a process needs to be accompanied by concrete changes. Many of the changes recommended in the reports were also submitted as formal comments to agencies in response to the regulatory review.

The problems in employment-based immigration are many. “Over the past several months, despite the rhetoric of reviewing regulatory policies, employers have faced the reality of agency actions that delay vital projects, force companies to go without valuable employees and push work outside the United States,” notes the NFAP report.

Today, applications for skilled foreign nationals are routinely greeted by U.S. Citizenship and Immigration Services adjudicators with a costly and time-consuming “request for evidence.” Immigration attorneys say they have never seen the process for approving applications this arduous and adversarial. In addition to problems with green cards and H-1B temporary visas, both the State Department and the immigration service routinely deny or delay applications for companies simply to transfer into the U.S. existing employees with specialized knowledge, another signal to keep more work abroad in the first place.

The oversight process has become more burdensome. In the past year U.S. Citizenship and Immigration Services has conducted 15,000 on-site audits of employers that hire skilled foreign-born professionals. To put the enormity of 15,000 audits a year in perspective, in FY 2009, there were only about 27,000 employers of new H-1B visa holders and 26,200 of them hired 10 or fewer foreign-born professionals. Large employers with recognizable household names have received 6 or more visits within the past year, which adds nothing to the integrity of the H-1B visa

category but tells companies our government would rather have them answer the same questions over and over than devote their energies to competing in global markets. At ports of entry, companies have reported cases of foreign-born engineers, computer specialists and executives being placed in 24-hour detention and sent back on planes because an immigration inspector at a port of entry did not think that professional's entry served America's economic needs.

To encourage the regulatory reform process, the National Foundation for American Policy gathered together recommendations from several immigration attorneys and business organizations, submitted comments to the Department of Homeland Security notice, and compiled these reports.

Among the recommendations in the report on employment-based immigration:

- Sharply curtail requests for evidence by U.S. Citizenship and Immigration Services adjudicators and adjudicate cases in a timely manner.
- Stop wasting public and private resources by subjecting employers to redundant audits rather than engaging in focused enforcement.
- To keep skilled foreign-born professionals in America, return labor certification, a process required for an employment-based green card that costs up to \$25,000, back to its original intention. At the time of the 1965 Immigration Act, the late Senator Edward Kennedy stated: "It was not our intention, or that of the AFL-CIO, that all intending immigrants must undergo an employment analysis of great detail that could be time consuming and disruptive to the normal flow of immigration." He said the Labor Department could simply use available statistical data on employment.
- To help ensure we have an accurate count of workers and their families who have been waiting 6 to 10 years for green cards due to low immigration quotas, allow skilled professionals to file early for adjustment of status prior to when a visa number is available. While this would not award green card status any faster, this could help our country retain skilled foreign nationals by giving them greater labor mobility, including the ability of the sponsoring employer to promote, and award interim benefits of travel and work authorization for the workers and their families while waiting for final green card issuance.
- To discourage illegal immigration, make visa rules less bureaucratic, not only for skilled professionals but also for H-2A visas for agricultural workers and H-2B visas for non-agricultural workers.
- Relieve long-time employer sponsors with good track records of certain burdensome application procedures.

- Adjudicate consistent standards for the highest-skilled immigrants in the employment-based 1st and 2nd preferences, since these categories are underutilized at a time when companies and countries are competing for the world's best talent.
- To foster startups, U.S. Citizenship and Immigration Services should rescind its January 2010 immigration memo that prohibited a company from petitioning for its founder, especially since, unfortunately, the agency's recently announced modification to the memo will benefit relatively few potential foreign-born entrepreneurs.

The Obama Administration receives higher marks on naturalization than in other areas of immigration policy. The report "Reforming the Naturalization Process" concludes it is possible that record can be improved with further reforms.

Among the recommendations in the report to improve the naturalization process and access to citizenship:

- Consider fee reform and streamlining that brings down the price of applying for naturalization, as proposed by the U.S. Conference of Catholic Bishops and the National Immigration Forum. Over the past decade, naturalization fees have risen from \$35 in 1983 to \$680 today.
- Revise and simplify the language in both the form and instructions, as recommended by several experts.
- Restore offsite naturalization interviews at local community centers. The Hebrew Immigrant Aid Society notes this is particularly important for people with disabilities in cities not served by U.S. Citizenship and Immigration Services field offices.
- Make citizenship part of the immigration integration process, as recommended by the Immigration Policy Center.
- Institute reforms so individuals do not lose their lawful permanent residence status due to time outside the country. Attorneys Cyrus Mehta and Gary Endelman provide salient recommendations to ensure our immigration service maintains rules that keep pace with the realities of 21st century travel, employment and business.

About the National Foundation for American Policy

Established in the Fall 2003, the National Foundation for American Policy (NFAP) is a 501(c)(3) non-profit, non-partisan public policy research organization based in Arlington, Virginia focusing on trade, immigration and related issues. The Advisory Board members include Columbia University economist Jagdish Bhagwati, Ohio University economist Richard Vedder, former U.S. Senator and Energy Secretary Spencer Abraham and other prominent individuals. Over the past 24 months, NFAP's research has been written about in the *Wall Street Journal*, the *New York Times*, the *Washington Post*, and other major media outlets. The organization's reports can be found at www.nfap.com.

2111 Wilson Blvd., Suite 700, Arlington, VA 22201
 phone: (703) 351-5042 fax: (703) 351-9292 www.nfap.com