

National Foundation for American Policy

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Research: President's Executive Action Should Consider Legal Immigrants, Those Waiting in Backlogs

Executive Action Likely to Help 4 to 6 Million Unauthorized Immigrants to Avoid Deportation and Potentially Become Eligible for Lawful Permanent Residence

Arlington, Va. – If President Obama decides to take executive action on immigration, then he should consider aiding those who have waited to immigrate to America through appropriate legal channels, according to a new report released by the National Foundation for American Policy (NFAP), an Arlington, Va.-based policy research group. The report finds, “Changes that only or primarily help those who entered the United States unlawfully could be interpreted as unfair to those who remain in legal immigration backlogs and might leave those who entered unlawfully in a better position than those who applied through a legal immigration category.”

The report, “Executive Action and Legal Immigration,” is available at www.nfap.com.

“Congress making legislative changes to the legal immigration system is the best way to address problems in the immigration system,” said Stuart Anderson, the author of the study and executive director, National Foundation for American Policy, and former head of policy and counselor to the Commissioner of the INS (August 2001 to January 2003). “But if the President is going to take executive action he should include administrative reforms that help those who have applied through the legal immigration system. Such reforms include reinterpreting who counts against the employment-based and family-based green card quotas and ways to improve labor mobility for skilled foreign nationals.”

The report estimates 4 to 6 million unauthorized immigrants could gain deferred action or be granted parole in place to avoid deportation, receive employment authorization and, if they are the parent, spouse or child of a U.S. citizen, over time become eligible for permanent residence (green cards) under measures advocated by the Congressional Hispanic Caucus and being considered by President Obama.

The research also found:

- A reinterpretation of current law that counts only the principal individuals sponsored and not their dependents would significantly shorten wait times for employment-based immigrants, many of whom now wait 6 to 10 years or more for green cards.
- The reinterpretation of the law would not “double” legal immigration. If it had been in effect from FY 2011 to FY 2013 counting only the principal individuals sponsored for employment-based immigration would have increased the overall annual level of legal immigration by approximately 17 percent (by about 170,000 people). Almost 90 percent of those sponsored for employment-based immigration are already in the country, many

working in a legal temporary status, and would not represent new entrants to the United States.

- Reinterpreting the statute for family-sponsored immigrants to count only principals and not dependents would reduce the long wait times experienced by many close relatives of U.S. citizens who have been sponsored for legal immigration.
- Estimates indicate counting only the principal individuals sponsored for family-based immigration would have increased the annual level of legal immigration by 14 percent (about 142,000 people) if in effect from FY 2011 to FY 2013.
- The Obama Administration can improve the labor mobility of those sponsored for employment-based green cards by a variety of means, including issuing an employment authorization document (EAD) and advance parole (for re-entry to the United States) to individuals with an approved I-140 petition for employment-based immigration.
- The Administration can also expand the degrees eligible for international students to receive 29 months of Optional Practical Training to include economics, accounting and other business-related fields. That would help international students unable to obtain an H-1B visa due to the limited supply to remain in the country.
- Other measures that would improve the legal immigration system include loosening the bureaucratic rules for admitting lower-skilled workers on legal H-2A and H-2B visas, improving the guidance for professionals with specialized knowledge on L-1B visas, and making available the unused supply from previous years of H-1B temporary visas and employment-based green cards.

Problems in the immigration system that need to be addressed with legislation include the lack of a visa category for year-round lower-skilled jobs, which contributes to illegal immigration, and the short supply of temporary visas and green cards for highly skilled professionals, which affects competitiveness, growth and innovation. However, administrative measures to attract talented people to the United States represent good reforms whether or not Congress ultimately passes immigration reform legislation.

According to the report, many immigration lawyers believe that the executive actions President Obama decides upon are likely to withstand legal scrutiny, including any possible court challenge, and be part of the immigration system for many years. That makes it important that changes to the immigration system include helping those who apply to enter and stay in the United States through legal immigration.

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.

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