

National Foundation for American Policy

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Research: Executive Action Would Likely Result in Delays for Individuals and Employers with Legal Immigrant and Temporary Visa Applications

Lack of Personnel Creates Tremendous Challenge for Immigration Agency

Arlington, Va. – Analysis and an examination of government documents finds if court action eventually allows President Obama’s executive action to proceed, then it is likely to result in delays for individuals and employers with legal immigrant or temporary visa applications, according to a new report released by the National Foundation for American Policy (NFAP), an Arlington, Va.-based policy research group.

The U.S. Court of Appeals in New Orleans recently ruled against the Obama Administration and will allow an injunction against its executive action program to continue. Another hearing is set for July 6. The report’s conclusions are relevant whether executive action moves forward during the Obama Administration or in the next Administration.

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

“Unfortunately, the only way U.S. Citizenship and Immigration Services (USCIS) can guarantee avoiding delays for legal immigration applications is to not shift experienced personnel away from current duties and product lines to administer applications for the new Deferred Action for Parents of Americans and Legal Permanent Residents (DAPA) or the expanded Deferred Action for Childhood Arrivals (DACA) program,” said Stuart Anderson, the author of the study, executive director of the National Foundation for American Policy, and former head of policy and counselor to the Commissioner of the INS (August 2001 to January 2003). “However, that may not be politically possible, since it would create long delays for those filing for deferred action under the President’s executive action and the Administration is likely to want to move quickly after being permitted to proceed.”

The Administration can avoid the problems if before processing applications under the new DAPA program it allowed a long lead time of at least several months to hire and train sufficient personnel dedicated solely to adjudicating and administering the new program’s applications. The analysis finds the desire to move quickly after a successful court resolution or an end to the injunction, the short amount of time to hire and train personnel, and the challenge of adjudicating a large influx of new applications will prevent USCIS from processing both new and existing applications without delays.

In February 2015, in response to a lawsuit from 26 states, U.S. District Judge Andrew Hanen issued an injunction that blocked the Obama Administration from planning or processing applications under an expanded version of DACA or a new program, Deferred Action for Parents of Americans and Legal Permanent Residents (DAPA). On April 17, the Fifth Circuit court in New

Orleans held a hearing on the Administration's motion to lift the injunction. On May 26, the Fifth Circuit ruled 2-1 against lifting the injunction.

The analysis in the report poses the question: What is likely to happen to immigration processing if the Obama Administration (or a succeeding Administration) eventually prevails in court, either by a lifting of the injunction or by winning on the merits of the case at the District Court level or higher?

In 2012 and 2013, after President Obama announced the Deferred Action for Childhood Arrivals (DACA) program, the sudden influx of applications caused significant processing delays when finite resources, most importantly personnel, were stretched too thin. After the announcement of DACA in June 2012, the time for U.S. Citizenship and Immigration Services (USCIS) to process an I-130 petition for an alien relative increased from 5 months in June 2012 to 11 months by October 2013. The near doubling in the wait time for a spouse, parent or child under 21 of a U.S. citizen happened because of limited resources to deal with both new applications for DACA and the existing flow of cases. The number of I-130 petitions for an alien relative "pending" (i.e., received but not adjudicated) increased from 82,496 to 1.9 million between the third quarter of FY 2012 and June 2013. USCIS blamed the long delays on "unforeseen general deficiencies within the local employment market" in Missouri, the site of a key service center for processing applications (the unemployment rate was above 8 percent in June 2012 and is now below 6 percent, indicating hiring new personnel will be more difficult today).

The executive action announced by President Obama in November 2014 may result in a caseload 3 to 7 times larger than the caseload from the DACA program that started in 2012 – 2 to 4 million applicants vs. the 610,375 initial DACA applications that USCIS approved by the end of FY 2014.

USCIS could shift experienced adjudicators to DAPA and attempt to "backfill" positions for processing legal and business applications with new hires. But given the time constraints and resource limitations it appears this will be difficult to do without causing delays.

Using private sector contract workers for certain functions will help but cannot address all the challenges. Only trained government personnel, not contractors, can perform adjudications. Moreover, while the private sector can hire workers more quickly than the federal government, a two-month timeframe, for example, to hire, train and gain security clearances for workers from the USCIS Office of Security and Integrity is challenging. Yet USCIS intended to implement such a two-month timeframe prior to the District Court injunction. A January 2015 solicitation to hire hundreds of additional contract workers stated, "USCIS intends to award a contract from this solicitation in March 2015 in order to provide the awardee time to hire, train, and process security clearances; and for full performance to commence on May 19, 2015."

The analysis in the report finds problems occur when government fees, which are not received until applications are filed, fail to cover the costs of unanticipated agency structural needs to process a large increase in applications, such as increased personnel, equipment or facilities. The sponsors of S. 744, a bill that passed the U.S. Senate in 2013, sought to avoid that problem by providing "startup costs" to cover key expenses ahead of an influx of applications. That option is not available with President Obama's executive action, since Congress is unlikely to appropriate such funds given the controversy over the President's November 20, 2014 action.

In its January 2015 contract solicitation, U.S. Citizenship and Immigration Services stated it expected only half of those eligible for DAPA – 2 million of the 4 million eligible – may apply for benefits. That figure has not appeared in other Administration pronouncements on executive action. USCIS estimated each applicant would file two to three applications (Request for Consideration of Deferred Action, Employment Authorization and Advance Parole), for a total of 5 to 6 million forms that must be processed.

Among the findings in the report:

- With potentially 2 to 4 million new applicants, the executive action announced by President Obama in November 2014 may result in a caseload 3 to 7 times larger than the number of cases from the DACA program that started in 2012. (As of the end of FY 2014, USCIS had approved 610,375 initial DACA applications.) USCIS planned a startup time of 3 months for the expansion of DACA (removing the current age cap for the deferred action program) and 6 months for the unauthorized immigrant parents of U.S. citizens and lawful permanent residents. That is only somewhat longer than the 2 months given before the start of DACA in 2012.
- While in 2012 and 2013 petitions for alien relatives were delayed, in the future processing delays could happen in any legal immigrant or temporary visa categories. That is because without a sufficient lead-time to hire personnel and train workers an agency such as USCIS can become overwhelmed by an increased workload. In short, not enough hands for too many cases.
- Based on an analysis of previously undisclosed documents obtained from USCIS, the agency may need to hire and train potentially 3,300 to 5,000 new people in a short period of time to deal with applications related to executive action. (That does not include hiring required due to normal attrition.) In response to a Congressional inquiry, USCIS conceded it would likely need to hire at least 3,100 new employees. The hiring challenge is compounded by a lack of time, since it is likely the Obama Administration would seek to start the flow of new applications for the DACA expansion and new DAPA program in the shortest possible timeframe, even though to date it has only hired two new employees to deal with the new applications due to the District Court injunction.
- Based on the expected number of applicants and the application fees, USCIS could collect between \$760 million and \$1.5 billion in fees for DAPA. One problem is the agency will not have access to that money upfront – only after people apply, although the agency has stated it has other funds available to use for the new program while awaiting the new fee money. Still, sufficient time to complete the hiring and contracting that would permit processing these new applications without affecting other applications from employers and legally present individuals in the United States seems unlikely.
- S. 744, which passed the U.S. Senate in 2013, contained a \$3 billion “startup” fund for the Department of Homeland Security (which includes USCIS) and \$1 billion for other cabinet departments that could fund important infrastructure needs such as hiring and facilities and be paid back to the U.S. Treasury as application fees arrive (at no cost to taxpayers).
- The analysis finds that plausible legislative scenarios that include legalization would confront many of the processing challenges posed by the President’s execution action but could be addressed by including a startup fund similar to S.744.
- Beyond the immediate processing dilemmas posed by executive action, USCIS should modernize and streamline where possible, including by implementing ideas received from stakeholders in a recent Request for Information.

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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