

2016 US presidential election: Where the candidates stand on immigration

October 31, 2016

In brief

The issue of immigration has been at the forefront of the US presidential election. This *Insights* outlines Hillary Clinton's and Donald Trump's immigration proposals and observes what these proposals could mean for corporate immigration.

PwC Law does not endorse any specific political opinions or views. The information in this Insights is current as of October 31, 2016, but may change as the candidates refine their positions.

In detail

Hillary Clinton

Overview

Hillary Clinton has focused on illegal immigration. In her first 100 days in office, she plans to:

- introduce comprehensive immigration reform that:
 - addresses the family visa backlog
 - creates a path to citizenship for qualified undocumented immigrants, and
 - brings millions of people into the formal economy
- enforce immigration laws in a humane and targeted way by:
 - closing private immigration detention centers
 - using resources to detain and deport individuals

who pose a violent threat to public safety, and

- providing refugees seeking asylum in the United States a fair chance

- abolish the three and ten year bans that force undocumented immigrants to leave the United States for those periods before being eligible to return
- end family detention for families that come to US borders in desperate situations
- allow all families, regardless of immigration status, to purchase health insurance through the *Affordable Care Act*

Clinton also supports President Obama's executive actions, DAPA (Deferred Action for Parents of Americans) and DACA (Deferred Action for

Childhood Arrivals), which provide temporary relief from deportation to certain qualified undocumented immigrants.

Corporate immigration

Clinton has noted that the US immigration system, often characterized by lengthy processing times and high fees, requires renovation to ensure it contributes to the goal of growing a stronger economy.

Students in science, technology, engineering and mathematics

Clinton has observed that the US immigration system has made it difficult for talented foreign nationals, educated and trained in US universities, to stay in the United States and contribute to the US economy.

To address this, as part of her Initiative on Technology &

Innovation, Clinton has proposed “stapling” a green card to science, technology, engineering and mathematics (STEM) Master and PhD degrees from accredited US institutions.

This would enable foreign students who complete a Master’s degree or PhD in any of the STEM fields to become US permanent residents.

PwC Law observes

Clinton’s proposal would allow Master’s and PhD graduates in the STEM fields to circumvent the H-1B cap, which limits the number of foreign nationals that can be issued a US visa. Further, more H-1Bs would then be available to foreign university graduates and non-STEM graduates from US universities.

Start-up visas

Clinton supports expanding the concept of “start-up” visas. These visas allow foreign entrepreneurs to come to the United States, build companies in technology-oriented globally traded sectors, creating jobs for American workers.

Clinton’s plan requires foreign entrepreneurs to have a commitment of financial support from US investors to obtain the visa. They must also create a certain number of jobs and reach performance benchmarks to apply for a green card.

PwC Law observes

Clinton’s proposal could expand on the EB-5 program, which grants permanent resident status to entrepreneurs who invest in a commercial enterprise in the United States and create or preserve 10 permanent full-time job for qualified Americans.

H-1Bs

Clinton has not commented on raising the H-1B cap (discussed above).

PwC Law observes

In light of Clinton’s proposals regarding STEM degree holders (discussed above), she may also favour an increase in the annual number of H-1Bs.

On the other hand, Clinton has echoed the need to safeguard American jobs, which could mean that she does not support increasing the H-1B cap.

Because Clinton agrees with the current administration, it appears that the existing H-1B parameters will remain for the foreseeable future, and US employers should continue to base their H-1B programs on the status quo.

Donald Trump

In contrast, Donald Trump’s campaign has emphasized the need to:

- build a physical wall between the United States and Mexico
- end the “catch and release” protocol, so that illegal entrants into the United States would be detained until removed from the country
- deport criminal aliens, in joint operation with local, state and federal law enforcement
- triple the number of Immigration and Customs Enforcement agents
- stop issuing visas in jurisdictions that are considered to have inadequate screening mechanisms
- end President Obama’s executive actions, DAPA and DACA, and deport beneficiaries of these programs
- end “sanctuary cities” (i.e. cities that avoid prosecuting individuals

solely because of their illegal status in the United States)

Corporate immigration

Any comments Trump has made on corporate immigration have been inconsistent. Trump has advocated both for and against allowing highly-skilled workers into the United States, making it difficult to discern his goals.

H-1Bs

Essentially, Trump’s immigration plan is to:

- raise the prevailing wage paid to foreign workers, and
- require employers to hire American workers first for every visa and immigration program

PwC Law observes

Raising the prevailing wage paid to foreign workers would primarily affect US companies that use the H-1B visa classification for specialty occupation work.

In addition, modelling the H-1B program after the permanent residency process, which requires employers to go through a costly and lengthy labour market test, would make the H-1B program less desirable.

Current H-1B programs could change significantly under Trump. Increased regulation is likely, relating to selecting the wage levels that are the basis of the prevailing wage requirement. This could cause H-1B employers to review their current wage practice and offer increases to H-1B beneficiaries.

Further, employers might find the H-1B program is no longer feasible, if before hiring an H-1B worker, they must test the labour market to ensure

there is no American worker willing and able to serve in the position.

Temporary visa ban for foreign nationals from “volatile” regions

Trump has called for a temporary ban on issuing visas to enter the United States from “volatile” regions, but has not specified what these regions are.

PwC Law observes

Trump’s emphasis on controlling immigration from Muslim countries could affect the visas issued for work purposes, as well as for business visitor purposes, from these regions.

Organizations that hire individuals from Muslim countries to work in the United States or to enter for business purposes (e.g. to attend meetings) could face significant visa delays.

At its extreme, Trump’s proposed ban could lead to the suspension of all visas issued to nationals of regions he deems threats to national security. This could halt operations between the United States and the targeted regions.

North American Free Trade Agreement (NAFTA)

Trump has been insistent on the need to abolish or renegotiate NAFTA, but he has not addressed the issue of TN (Trade NAFTA) classification under NAFTA.

TN classification permits the cross border transfer of American, Canadian and Mexican workers in certain professions (e.g. accountants, lawyers, engineers, doctors, management consultants and computer systems analysts).

Therefore, renegotiating or abolishing NAFTA could impede the flow of talent between Mexico, Canada and the United States and would significantly affect companies that currently benefit from TN classification (e.g. accounting firms, law firms and professional consulting firms).

PwC Law observes

While the extent of Trump’s proposed changes to NAFTA is unclear, a full abolition would result in the return of American, Canadian, and Mexican professionals benefiting from TN status to their home countries.

What to expect after the election

Changes to immigration law must be passed by Congress. For example, because the H-1B cap is set by Congress the new president could not singlehandedly increase this cap.

The president can override Congress only in limited instances. Therefore, unless Congress agrees with the new president’s position, changes to corporate immigration likely will occur slowly, following periods of significant debate.

However, the outcome of the election could affect the application of immigration law. This is because the next president will nominate or appoint (subject to confirmation by the Senate) both the Director of United States Citizenship and Immigration Services (USCIS), who provides guidance to USCIS adjudicators on applying immigration law to specific cases, and the Secretary of State, who influences how Consular Officers apply the law when deciding on certain visa applications.

The takeaway

Clinton’s goal of comprehensive immigration reform means that corporate immigration changes likely would occur very slowly and only after the entire immigration realm is analyzed.

Under Trump’s approach, it is likely that action would be taken at the outset relating to illegal immigration, while corporate immigration changes might be reviewed later.

Under either candidate, it is certain change will occur, but the timing and nature of the change remain to be seen.

Let's talk

For a deeper discussion of what these issues mean for you, please contact any of the following members of PwC Law LLP:

Monika Szabo
+1 416 687 8580
monika.szabo@pwc.com

Mark Dey
+1 416 814 5835
mark.dey@pwc.com

Sheila Snyder
+1 604 806 7185
sheila.snyder@pwc.com

PwC Law LLP is a law firm affiliated with PricewaterhouseCoopers LLP, an Ontario limited liability partnership. It provides a broad range of Canadian tax and Canadian, US and global immigration services.

Visit www.pwc.com/ca/law

This content is for general information purposes only, and should not be used as a substitute for consultation with professional advisers.

© 2016 PwC Law LLP. All rights reserved. PwC Law LLP is a law firm affiliated with PricewaterhouseCoopers LLP, an Ontario limited liability partnership.