

Global Immigration alert

November 2024

United States

Potential impacts to immigration and global mobility programs resulting from the 2024 US federal election

Executive summary

Former President Donald J. Trump was re-elected to a second term on 5 November 2024. As with the 2016 and 2020 election cycles, immigration was a significant issue during the campaign, and while most policy discussion centered on illegal immigration, significant change can be expected in the legal and employment-based immigration spaces in President Trump's second administration.

US employers and their foreign national employees can expect a myriad of changes to temporary work visa and immigrant (green card) visa processing based on policies pursued during Trump's first administration and recent public statements made by the president and his advisors on immigration. Below is a summary of potential developments that may occur in the immigration landscape with the incoming administration.

Background and analysis

While comprehensive immigration legislation has been elusive in recent years, it is important to note that major immigration policy changes can occur and take effect quickly and with little advance notice via executive order, sub-regulatory policy, policy memos or other administrative changes.

Based on some of the most significant policies that emerged during the first Trump administration, employers and their employees should be prepared for coming changes, which could include:

- ▶ Reversion of US Citizenship and Immigration Services (USCIS) policy that instructs examiners to provide deference to prior non-immigrant visa petition approvals. This previously resulted in increased Requests for Evidence (RFEs) and denials on extension requests, including for foreign nationals who had been working in the same occupation for the same employer in the US for many years.
- ▶ Increased scrutiny, and consequent increase in denials and delays in visa issuance, of visa applications at consular posts abroad. Prior vetting policy involved collecting biographical information and social media history.
- ▶ Reductions in staffing at the US Department of State, which occurred under the first Trump administration, resulted in challenges in scheduling visa appointments and other backlogs, and ultimately impacted visa issuance.
- ▶ Discontinuation of the Biden administration policy prioritizing high-skilled visa categories in both non-immigrant (O-1) and immigrant (National Interest Waiver) visa categories, which could lead to increased rates of denial.
- ▶ Issuance of executive orders that suspended admission of foreign nationals from certain designated countries. Prior to the COVID-19 pandemic, travel-based executive orders focused on foreign nationals from predominantly Muslim countries.
- ▶ Return of in-person interview requirements at USCIS for employment-based green card applicants.

- ▶ Rescission of the Deferred Action for Childhood Arrivals (DACA) program. The program currently remains intact, if limited in new applications and renewals, due to a Supreme Court decision and ongoing legal challenges. Trump's second administration provides an opportunity to address the deficiencies identified in the Supreme Court decision.
- ▶ Increased minimum prevailing wage requirements for foreign workers from the Department of Labor.
- ▶ Revision to work authorization processes for certain dependent and student visa categories.
- ▶ Termination of Temporary Protected States (TPS). In his first term, President Trump revoked TPS for several countries, including Haiti, Sudan, and El Salvador, and has recently declared an intention to terminate this status again, specifically for Haitians, although other countries could also be impacted.
- ▶ Implementation of Form I-944, Declaration of Self-Sufficiency. This form became mandatory for immigrant visa applicants to demonstrate that they were not likely to become a "public charge." This ground of inadmissibility was also examined in the context of requests for extension and change of non-immigrant status, although the additional form and financial evidence did not have to be provided.

What this means

US employers and their foreign national employees must be prepared for significant changes in the coming months, including as early as day one of Trump's second administration. We are closely monitoring developments and are ready to proactively advise clients on how to plan ahead and best navigate changes that may come.

Our team is highly experienced with the first Trump administration's policies and changes, both from within government agencies and as outside counsel guiding our clients. Join us for our upcoming webcast on this topic by clicking [here](#).

For additional information, or if you wish to discuss this further, please contact your EY Law LLP or Mehlman Jacobs LLP professional.

EY Law LLP

Alex Israel, Partner
+1 416 943 2698
alex.d.israel@ca.ey.com

Marwah Serag, Partner
+1 416 943 2944
marwah.serag@ca.ey.com

Melanie Bradshaw, Partner
+1 416 943 5411
melanie.bradshaw@ca.ey.com

Mehlman Jacobs LLP
Sharon Mehlman, Partner
+1 858 404 9350
sharon.mehlman@mehlmanjacobs.com

Dilnaz A. Saleem, Partner
+1 713 750 1068
dilnaz.saleem@mehlmanjacobs.com

Author: Jessica Marks, Senior Manger
+1 416 943 3229
jessica.marks@ca.ey.com

Roxanne Israel, Partner
+1 403 206 5086
roxanne.n.israel@ca.ey.com

Jonathan Leebosh, Partner
+1 604 899 3560
jonathan.e.leebosh@ca.ey.com

Stephanie Lipstein, Partner
+1 514 879 2725
stephanie.lipstein@ca.ey.com

EY | Building a better working world

EY exists to build a better working world, helping create long-term value for clients, people and society and build trust in the capital markets.

Enabled by data and technology, diverse EY teams in over 150 countries provide trust through assurance and help clients grow, transform and operate.

Working across assurance, consulting, law, strategy, tax and transactions, EY teams ask better questions to find new answers for the complex issues facing our world today.

Follow us on X @EYCanada

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via ey.com/privacy. EY member firms do not practice law where prohibited by local laws. For more information about our organization, please visit ey.com.

About EY Law LLP

EY Law LLP is a Canadian law firm, affiliated with Ernst & Young LLP in Canada. Both EY Law LLP and Ernst & Young LLP are Ontario limited liability partnerships. EY Law LLP has no association or relationship with Ernst & Young LLP in the US, or any of its members. Ernst & Young LLP in the US does not practice law, nor does it provide immigration or legal services. For more information, please visit EYLaw.ca.

About Mehlman Jacobs LLP

Mehlman Jacobs LLP specializes in immigration law and provides legal and strategic advice to employers and their employees on all stages in the immigration process. Providing boutique, customized experience, the firm aims to provide transparency to an often complex and uncertain environment. Mehlman Jacobs, a California Limited Liability Partnership, limited to the practice of immigration law, is a member of Ernst & Young Global Limited and is independently owned and operated by US licensed lawyers.

© 2024 Ernst & Young LLP.
All Rights Reserved.

A member firm of Ernst & Young Global Limited.

EYG no. 009603-24Gb1

This publication contains information in summary form, current as of the date of publication, and is intended for general guidance only. It should not be regarded as comprehensive or a substitute for professional advice. Before taking any particular course of action, contact us or another professional advisor to discuss these matters in the context of your particular circumstances. We accept no responsibility for any loss or damage occasioned by your reliance on information contained in this publication.