



## **Fox Rothschild Podcast**

### **Featuring Immigration Partners Robert Whitehill and Catherine Wadhvani in Pittsburgh**

*We are talking today with Robert Whitehill and Catherine Wadhvani on the Fox Rothschild Podcast. Bob and Catherine are partners in the firm's Immigration Practice Group. They frequently post on the firm's popular blog, Immigration View, and they join us today to discuss the use of Presidential Executive Action in resolving the nation's immigration issues. Bob, Catherine, good morning.*

**Robert Whitehill:** Good to be here.

**Catherine Wadhvani:** Good morning. Thank you.

***Question:** Bob, last year, the President of the United States used the technique of Executive Action to direct the Department of Homeland Security to implement certain immigration policies and regulations.*

**Robert Whitehill:** Yes. The announced policies, hopefully to be soon implemented, focus on border security, prosecutorial discretion, priorities in removal and legal immigration. The president's actions have sparked a firestorm from detractors and jubilation from supporters. It's known formally as "Immigration Accountability Executive Action." But however it's known, these proposed changes address some decades-old problems in our immigration system, which both supporters and detractors describe as broken.

***Question:** Catherine, can you tell us more about what the Executive Action is and what it is not?*

**Catherine Wadhvani:** Yes, I'll start with what it isn't. The action is not an act of Congress. It can only go so far to fix the country's immigration system. Ultimately, Congress is responsible for passing federal laws. The primary federal law in the immigration field is the Immigration and Nationality Act, which is principally administered by the U.S. Department of Homeland Security. Agencies fashion regulations implementing the laws in force as well as the policy of the administration. That said, executive actions by the president are normal and ordinary, and have been exercised with regard to immigration by every president for more than 50 years.

***Question:** Bob, what do you see as the highlight of the Executive Action?*



**Robert Whitehill:** I would say that the highlight of the Executive Action is the re-ordering of enforcement priorities. The Executive Action directs Homeland Security to grant deferred action to millions of undocumented immigrants who have strong ties here, who are not security threats, who do not have significant criminal backgrounds and meet other criteria on a case-by-case basis. This action reflects recognition that millions of undocumented immigrants cannot be deported and cannot be rounded up. It's not "American." As the president said, "deport felons, not families."

*Question: Catherine, is the deferred action an alternative type of visa allowing undocumented immigrants to remain here?*

**Catherine Wadhvani:** No. Deferred action is not a visa. It merely confers temporary relief from the threat of removal and, under the current Executive Action, will be limited to three years at a time but could be revoked earlier. When it is implemented, which it will be in part this month, deferred action programs will potentially allow millions of undocumented childhood arrivals and parents of U.S. citizens or permanent resident children to benefit. The benefits will be in the form of employment authorization, Social Security numbers and drivers' licenses. So, for those granted deferred action benefits, they will be lawfully present, but they will not be eligible for citizenship or for adjustment of status to permanent residence. Also, the beneficiaries will not be able to jump in any lines in which others wait for their "green cards." And the final thing I'd like to mention is that deferred action benefits are funded by filing fees, and this should result in more tax revenues from workers who would then have work authorization and Social Security numbers.

*Question: Bob, is the Executive Action a fix for our immigration system?*

**Robert Whitehill:** The Executive Action is a great step forward, but no, it's not a fix. It only addresses some parts of our broken system, parts that can be addressed by Executive Action. Congress makes the laws, and congressional action is really required to address the broad scope of immigration issues that we have. For example, Congress has not increased the number of H-1B worker visas in more than a decade. Congress has not dealt with the number of immigrant visas that are available for twice that long. And in failing to do so, this has resulted in a great deal of difficulty for foreign nationals in entering the legal workforce and seemingly endless delays for many in securing their green cards. Part of the action addresses benefits to make the waiting less painful and entry into the United States workforce for professionals and entrepreneurs somewhat easier.

*Question: Catherine, what will be the Department of Homeland Security's role in carrying out this action?*



**Catherine Wadhvani:** Homeland Security and other agencies are directed to prepare and promulgate regulations to ease the problems within existing laws. One thing that DHS is expected to do is to give science, technology, engineering and mathematics students a longer period of post-degree optional practical training. Another possible change will be to give dependent relatives of those with approved immigrant visa petitions the ability to secure employment authorization. And yet another possible change will be to broaden the availability of national interest waivers for certain entrepreneurs.

*Question: Bob, are you seeing any immediate effect of the Executive Action?*

**Robert Whitehill:** Yes, there's been a great deal of effect from the Executive Action starting with discussion about immigration law and immigration reform and lawsuits being filed in federal court. But more immediately, the Department of Homeland Security has announced recently that the enhanced DACA – Deferred Action for Childhood Arrivals program – will come online in a few weeks, beginning February 18. Moreover, they predict that their program for deferred action for the parents of U.S. citizens and permanent resident children will be effective in May. In addition, the Executive Action has encouraged both Homeland Security and immigration stakeholders to advance ideas to modernize our immigration system. On the regulatory front, there are changes underway. Some may take many months to be formulated and passed. Some may take even longer than months. One significant regulatory change already underway is to address the rights of H-4 spouses of H-1B visa holders to work. Under current regulations, H-4 spouses do *not* have employment authorization. Late last year, the process began to change the regulations to permit certain H-4 spouses to gain employment authorization. This is one example of a change to modernize our system.

*Question: Catherine, do you envision that the proposed regulatory changes will be significant?*

**Catherine Wadhvani:** Yes, I believe that they will be. Further to what Bob mentioned, the changes could modify the way immigrant visa numbers are counted. That should alleviate backlogs for professional workers who currently face exceedingly long waiting periods for their green cards. In addition, grants of deferred action are predicted to affect half of the undocumented immigrants in the United States. These are humane and practical possible changes and will likely bring relief to millions. But I have to add that although executive actions are dramatic and historic, only Congress can fully address the immigration system, and the one that remains with us today is really from a different time period and fails unfortunately to reflect the needs of twenty-first century America.



*Narrator: Well, thank you Bob and Catherine. Listeners, to confidentially discuss how the president's immigration Executive Action might impact your organization, please contact Bob Whitehill at 412-394-5595 or [rwhitehill](mailto:rwhitehill) – that's R-W-H-I-T-E-H-I-L-L – at [foxrothschild.com](http://foxrothschild.com), or Catherine Wadhvani at 412-394.5540 or [cwadhvani](mailto:cwadhvani) – that's C-W-A-D-H-W-A-N-I – at [foxrothschild.com](http://foxrothschild.com).*

*Fox Rothschild LLP is a full service law firm built to serve business leaders, backed by more than 600 lawyers coast to coast. Our clients come to us because we understand their issues, their priorities and the way they think. We help clients manage risk, and make better decisions by offering practical advice. Visit us on the web at [www.foxrothschild.com](http://www.foxrothschild.com).*

# # # #