

Immigration Executive Action: Will it affect physicians?

President Obama's Nov. 20 Immigration Accountability Executive Action (IAEA) could affect millions. While there are no provisions specifically pertaining to foreign physicians, parts of the IAEA could affect physicians, their families, colleagues, support personnel, etc. Leaving aside the fact that there are challenges to the IAEA, here's a quick look at the framework that IAEA established.

Legal immigration

Summary: Several aspects of the IAEA address the country's legal immigration system. These are potentially of greatest relevance to foreign physicians and include provisions relating to highly skilled foreign workers, researchers, inventors and U.S. businesses. The main points of IAEA relating to legal immigration call for:

- Use of all available immigrant visa numbers each fiscal year when required by demand (This should help reduce backlogs in immigrant visa processing.);
- Simplifying and modifying the Visa Bulletin to include more reliable indications of visa availability (This should provide clarity and perhaps greater certainty to those with or in fear of retrogressed priority dates.);
- Clarification regarding I-485 adjustment of status portability relating to job mobility and natural career progression (This should enable career advancement without fear of losing the

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benefit of existing green card efforts.);

- Clarification of National Interest Waiver I-140 (NIW I-140) standards to encourage use by foreign inventors, researchers and entrepreneurs who will benefit the U.S. economy (This doesn't impact the Physician National Interest Waiver I-140 for clinical patient care shortage-area physicians; it could be useful to physicians pursuing non-clinical care career paths.);

- Temporary parole (special permission to enter or remain in the United States lawfully) for inventors, researchers and entrepreneurs who may not be eligible for the NIW I-140, but who have been granted "substantial U.S. investor financing" or otherwise are likely to create jobs by developing new technologies or pursuing cutting edge research (This could be useful to physicians pursuing non-clinical care career paths, but there will likely be better options in most cases.); Note that there also is a parole-in-place provision relating to family members of armed forces members, veterans and enlistees;

- Expanded and extended optional practical training (OPT) (This will likely be of limited use by physicians, but could be useful regarding the employment of those in allied health care professions that support the work of physicians.);

For now, the legal IAEA provisions that are perhaps most likely to benefit foreign physicians include those that could reduce the visa backlog (particularly for those from India or China who are awaiting visa numbers in the EB-2 classification), as well as clarifications relating to I-485 adjustment of status portability.

- Clarification of the L-1B specialized knowledge standard used by multinational companies (This will likely be of very limited use by physician practices.).

Prognosis: There is no set timing for implementation of any of the legal IAEA provisions. Overall, the finer details pertaining to the IAEA's legal immigration provisions remain to be seen, so we must keep that in mind and await the issuance of guidance, regulations, etc. For now, the legal IAEA provisions that are perhaps most likely to benefit foreign physicians include those that could reduce the visa backlog (particularly for those from India or China who are awaiting visa numbers in the EB-2 classification), as well as clarifications relating to I-485

adjustment of status portability. The NIW I-140 clarifications don't seem to relate to the Physician NIW I-140 short-age area program which appears to have been running fairly smoothly for years. Physician researchers, however, likely will welcome NIW I-140 clarification, along with physician inventors and entrepreneurs.

The same would seem to be so regarding parole for inventors, researchers and entrepreneurs, but most physicians will probably choose to use existing options to apply for U.S. permanent residence. Nonetheless, the IAEA sets the framework for expanded immigration opportunities for physicians pursuing less traditional career paths, as well as for relatives and those in allied health care professions. Because the Department of Labor will soon be reviewing its nearly 10-year-old PERM program, and it remains to be seen what effect this may have on the processing of PERM applications (an often-used green card path), the IAEA provisions may become very valuable.

Deferred Action (aka DACA and DAPA)

Summary: DACA or Deferred Action for Childhood Arrivals is a 2012 Executive Action directed at "deferring action" against (i.e., not immediately taking steps to remove from the United States) those who entered the United States without inspection as children. There are of course eligibility requirements and exclusions, but to date, DACA has enabled more than 500,000 childhood arrivals to obtain employment authorization, social security cards, and in many states, driver's licenses and a chance to seek higher education. DACA does not provide

legal status (e.g., H-1B status, U.S. permanent residence, etc.) to these individuals, only lawful presence (i.e., a period of stay that the government has authorized) and benefits eligibility that may be revoked. The IAEA allows for expansion of the DACA age range, as well as an increase in the approval period from 2 to 3 years at a time. Implementation is expected to take approximately 90 days from the date of the IAEA.

More significant is DAPA or Deferred Action for Parental Accountability. DAPA would provide eligibility to apply for lawful presence (again, not legal status), work authorization, etc., to the parent of a U.S. citizen or lawful permanent resident born on or before Nov. 20, 2014 (the date of the IAEA). Implementation is expected to take about 180 days from the date of the IAEA.

Prognosis: These parts of the IAEA have the potential to affect more than 4 million people who are currently in the United States without lawful status. Because foreign physicians currently have viable options to secure and maintain lawful status for themselves, their spouses and children, many physicians likely will not be directly impacted. Those physicians who were not able to avail of avenues toward lawful status could, however, find DACA or DAPA helpful. Perhaps more realistically will be a benefit to personnel in health professions that support the work of physicians, as well as parents or other family members of physicians.

An indirect effect on physicians could potentially be a delay in processing of immigration cases. This could happen if the Immigration Service is inundated with DACA and DAPA applica-

tions and steps aren't taken to relieve the demands on existing Immigration adjudicators.

Enforcement

Summary: There are many aspects to the enforcement provisions of the IAEA. Briefly stated, the focus is on securing the country's borders from illegal immigration, prioritizing removal efforts of persons who pose a violent criminal or terrorist threat, facilitating case processing in the immigration courts and I-601a waivers from removability, etc.

Prognosis: While it would be naive to think that no foreign physicians might benefit from these provisions, as a percentage, the effect is probably small.

Conclusion: The IAEA will take time to be implemented and is already facing challenges, which creates uncertainty. If implemented to fully attract those who will likely benefit the United States, more options could become available for foreign physicians. Physicians who are likely to reap the greatest advantage are physicians from India and China whose green card applications face processing delays due to the lack of immigrant visa numbers.

As an aside, H-4 work authorization may be imminent. Efforts in this regard were already underway when the president announced his Executive Action. It's worth mentioning because it could benefit "double doc" couples where one spouse is caught in the green card backlog with an H-4 spouse who would like the opportunity to work in the United States.

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