

Where Do the Presidential Candidates Stand on Employment Visas?

Working Together

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While many observers of the 2016 United States presidential campaign have called immigration policy one of the central issues in the election, the implications of that heightened attention to the issue are not equally clear for all stakeholders in the system. Unlike the high-profile deportation, “amnesty,” and border security discussions that capture much of the media interest in this area, the candidates’ proposals on immigration rules for employers, highly-skilled foreign graduates, and immigrant investors are relatively less developed and less publicized.

Broadly speaking, Republican nominee Donald Trump’s stated intention is to lower overall immigration levels, both documented and undocumented, while Democratic nominee Hillary Clinton’s is to pursue what is known as “comprehensive immigration reform,” bundling increased security and enforcement measures with revised and in many cases expanded categories of available entry to the United States and work authorization. At the most general level, then (and at least to the extent that Congress goes along with the new president’s priorities), one can probably anticipate fewer available work visas and employment-based immigration opportunities overall in a Trump administration than in a Clinton one, and possibly greater employer compliance initiatives. But at a more granular level, where are the candidates’ positions similar, where do they diverge, and where do we so far have relatively little information?

E-Verify

One area where the candidates’ positions probably overlap is E-Verify, the federal government’s electronic system by which employers can verify the identities and work authorizations of employees. Mr. Trump has explicitly stated, including in an August 31, 2016 campaign speech setting out much of his position on immigration issues, that he intends to require expanded use of E-Verify, which probably means making it a mandatory part of the I-9 process for all hiring. While Secretary Clinton has not addressed this issue individually in her immigration proposals, she has implied a similar position through her endorsement of comprehensive reform like the “Gang-of-Eight” bill that passed the Senate in 2013. A mandate for universal employer use of E-Verify was a key compromise in that bill, and probably will be required in order to reach Congressional consensus on any new comprehensive reform legislation that might be proposed in a Clinton administration.

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Work authorization under DACA and DAPA

Conversely, the candidates have diametrically opposed positions on President Obama's executive orders known as Deferred Action for Childhood Arrivals (DACA) and Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), and on the work authorization that is part of those programs. Secretary Clinton favors both programs, and has stated that as president she would defend them in the lawsuits in which they are currently partly enjoined. Mr. Trump regards DACA and DAPA as unconstitutional, and has said that he would immediately rescind them.

H-1B Visas

An area where the extent of the candidates' differences is unknown is the H-1B visa program, the principal vehicle for temporary employment of foreign nationals in professional positions. Mr. Trump has been very critical of the program, taking the position that it deprives U.S. technology workers of jobs and depresses their earnings. In the early primary campaign, he initially proposed eliminating H-1B visas altogether, but has acknowledged softening his position since, indicating that he would not be opposed to admitting such workers where there is a demonstrated skill shortage, and suggesting that the visas be subject to a requirement that the sponsoring employers first seek to recruit qualified U.S. workers. While Secretary Clinton's stance likely is more favorable to the program, it is also much less clear, as she has not addressed H-1B visas specifically in campaign remarks the way Mr. Trump has, and the issue did not come up in any of their head-to-head debates, the way it often did in the Republican primary debates. Two clues to her position, however, are (i) her support for comprehensive immigration reform legislation, which is typically understood to entail raising annual H-1B visa caps, as is a feature of the Gang of Eight bill, and (ii) her own proposal to grant permanent resident visas to foreign holders of post-graduate STEM degrees from United States universities, a more expansive benefit for a narrower subset of the population, tech workers, that employers most often seek to sponsor for H-1B visas.

Entrepreneurial Visas

The extent of the candidates' differences on visas for foreign investors is also unknown. While there has been little campaign discussion of the EB-5 and E-1/E-2 visa categories, the existing vehicles for much such investment, Secretary Clinton has proposed an apparently entirely new category of "start-up" visas for entrepreneurs seeking to establish businesses in the United States. Portrayed as part of a wider plan to bolster the formation of high-technology businesses and deepen the technology talent pool, the proposed visas would differ from the EB-5 program by requiring would-be visa holders to demonstrate investment commitments from Americans to the new businesses, rather than requiring the visa applicants to have and commit large sums of their own. Mr. Trump has made little response to that proposal, and little comment on investor visas more generally. And Secretary Clinton has not said whether her proposed start-up visas are meant to supplement or supplant the rapidly-growing EB-5 visa category, leaving the likely fate of that program uncertain in either administration.

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In short, despite the enormous attention paid to immigration issues in this campaign, many details of the candidates' positions on high-profile aspects of the business- and employment-based portions of the immigration system remain unclear. While some clear points of difference have emerged, it also bears remembering, as always, that significant moves away from the status quo on any of the above issues, with the possible exception of DACA and DAPA, will require a consensus in Congress that has been lacking in the past several presidential administrations.

Tags: Immigration, U.S. Department of Labor, Visas