

Latest Proposal for Immigration Reform Focuses on Merit-Based System

April 26, 2019 | **IMMIGRATION**

As the 2020 presidential election battlefield heats up, the White House has indicated a continued focus on achieving major immigration change. In its latest move to facilitate much-needed change, Senior White House Advisor Jared Kushner announced that he has developed a detailed plan for a merit-based immigration system, akin to the systems currently in place in Australia, Canada and New Zealand. The plan will be presented to the White House in the coming week or two, according to Kushner, and has been developed in partnership with Stephen Miller—a White House staffer who is felt to be “tougher” on immigration than some—and Kevin Hassett, Chairman of the Council of Economic Advisers (a U.S. agency within the Executive Office of the President that advises the president on economic policy).

This type of system has been under review for a while now. A study by the CATO Institute in January 2018 analyzed an earlier draft framework of a merit-based system, which was estimated to result in a reduction of nearly 22 million legal immigrants to the U.S. over the coming five decades. While the actual text of the to-be proposed plan remains to be seen, past draft legislation indicates a strong likelihood that a plan to revise our immigration system would not just reorganize how immigrants are selected (e.g., family-based vs. skills based)—it would likely be aimed at reducing legal immigration significantly. A merit-based system could most dramatically impact the number of family-sponsored immigrants, which is a dramatic pivot away from traditional U.S. immigration policy that has favored family unity over other factors.

The devil is in the details, so we will have to wait and see how Congressional leaders will respond to the proposal, once presented. It is understood that at this point, the proposal does not address former President Obama’s program known as Deferred Action for Childhood Arrivals (“DACA”), or people who have Temporary Protected Status (“TPS”). Democrats in Congress have insisted that any immigration package include provisions addressing these two programs. Knowing he may have difficulties selling the proposal to Democrat Congressional leaders, President Trump may simply be staking out his overall immigration policy in the lead-up to the 2020 election. By including provisions increasing the number of high-skilled visas, as well as provisions addressing a guest worker program for seasonal labor in the agriculture industry, the president seems to be seeking to shore up support in the business and agriculture communities, especially in key states that may decide the outcome of the 2020 election.

To give some context to the history of immigration reform in the United States, below is the history and timeline of major United States immigration laws:

2002 HOMELAND SECURITY ACT

In the aftermath of 9/11, the Homeland Security Act transferred nearly all the functions of the U.S. Immigration and Naturalization Service (INS) to the new Department of Homeland Security (DHS)—which includes U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE) and U.S. Citizenship and Immigration

Services (USCIS).

1996 ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT

Increased enforcement at the border and in the interior, including mandates to build fences at the highest incidence areas of the Southwest border. Established or revised measures for worksite enforcement, to remove criminal and other deportable aliens and to tighten admissions eligibility requirements. Expanded restrictions laid out in the 1996 Personal Responsibility and Work Opportunity Reconciliation Act on access to means-tested public assistance programs for new legal permanent residents and unauthorized immigrants.

1990 IMMIGRATION ACT

Increased the annual immigration cap to 700,000 during fiscal years 1992-1994, followed by 675,000 as of the 1995 fiscal year, and revised the preference categories. This allocated 480,000 family-sponsored visas, 140,000 employment-based visas, and 55,000 “diversity immigrant” visas annually. It also created H-1B visas for highly skilled temporary workers and H-2B for seasonal, non-agricultural workers and revised the grounds for exclusion and deportation, particularly those based on political and ideological grounds. This act authorized the attorney general to grant “temporary protected status” (TPS) to nationals of countries suffering from armed conflicts, natural disasters or “other extraordinary and temporary conditions.”

1986 IMMIGRATION REFORM AND CONTROL ACT

Granted a pathway to permanent residency to unauthorized immigrant workers who lived in the U.S. since 1982 or worked in certain agricultural jobs (approximately 2.7 million were granted this status.) Created the H-2A visa for temporary, seasonal agricultural workers. Imposes sanctions on employers who knowingly hire unauthorized workers and increases border enforcement

1965 IMMIGRATION AND NATIONALITY ACT

Replaced the national origins quota system with a seven-category preference system emphasizing family reunification and skilled immigrants (immigrants from the Western Hemisphere were exempt from the preference system until 1976.) No visa cap was placed on the number of immediate family members of U.S. citizens admitted each year.

1952 IMMIGRATION AND NATIONALITY ACT

(1) Reaffirmed the national origins quota system; (2) limited immigration from the Eastern Hemisphere while leaving the Western Hemisphere unrestricted; (3) established preferences for skilled workers and relatives of U.S. citizens and permanent resident aliens; and (4) tightened security and screening standards and procedures. It also created quota preferences for skilled immigrants and family reunification.

1942 BRACERO AGREEMENT

Was a bilateral agreement between the U.S. and Mexico to permit Mexican nationals to serve as temporary agricultural workers during WWII labor shortages. Required employers to pay a wage equal to that paid to U.S.-born farm workers and provide transportation and living expenses.

1924 IMMIGRATION ACT

Further restricted immigration, decreasing the annual cap from 350,000 to 165,000. Nationality quotas equaled 2% of the foreign-born individuals of that nationality in the 1890 census with a minimum quota of 100. As a result, the law favored migration from northern and western European countries with longer histories of migration to the U.S.

while limiting migration from eastern and southern European countries with newer immigration patterns.

1924 LABOR APPROPRIATION ACT

Established U.S. Border Patrol as a federal law enforcement agency to combat illegal immigration and smuggling along the borders between inspection stations.

1921 EMERGENCY QUOTA ACT

First U.S. law to create numerical quotas for immigration based on nationality. Quotas were equal to 3% of the foreign-born population of that nationality in the 1910 census. Immigration from Asian countries continued to be barred. Nationality quotas did not apply to countries in the Western Hemisphere, government officials or temporary visitors. Under this law, total annual immigration was capped at 350,000.

1903 IMMIGRATION ACT

The first U.S. law to restrict immigration based on immigrants' political beliefs; banned anarchists, beggars and importers of prostitutes from immigrating.

1891 IMMIGRATION ACT

The Bureau of Immigration was established under the Treasury Department to federally administer all immigration laws. It expanded the list of exclusions for immigration from prior laws to include those who have a contagious disease and polygamists. Permitted the deportation of any unauthorized immigrants or those who could be excluded from migration based on previous legislation. Made it a federal misdemeanor to bring unauthorized immigrants into the country or aid someone who is entering the U.S. unlawfully.

1875 IMMIGRATION ACT

The nation's first restrictive immigration statute; prohibited the immigration of criminals and made bringing to the U.S. or contracting forced Asian laborers a felony.

1864 IMMIGRATION ACT

Centralized control over immigration by creating a commissioner of immigration, appointed by the president of the United States to serve under the secretary of state.

1798 ALIEN ENEMIES ACT

Authorized the imprisonment or deportation of male citizens (ages 14 and older) of a hostile nation during times of war; the act was used during World War II, and today a modified version permits the president of the United States to detain, relocate or deport alien enemies during war.

1798 ALIEN FRIENDS ACT

Authorized the president of the United States to imprison or deport any alien who was deemed dangerous to the U.S. This act was the first to authorize deportation for immigrants.

1790 NATURALIZATION ACT

Established the first rules for acquiring citizenship in the United States of America. The act created a uniform rule of naturalization and a residency requirement for new citizenship applicants. The law required immigrants to live in the United States for two years and their respective state of residence for one year prior to applying for citizenship.

Related Team



Elizabeth M. Klarin

Partner

Disclaimer: *The information in this post is provided for general informational purposes only, and may not reflect the current law in your jurisdiction. No information contained in this post should be construed as legal advice from our firm or the individual author, nor is it intended to be a substitute for legal counsel on any subject matter. No reader of this post should act or refrain from acting on the basis of any information included in, or accessible through, this post without seeking the appropriate legal or other professional advice on the particular facts and circumstances at issue from a lawyer licensed in the recipient's state, country or other appropriate licensing jurisdiction.*