



NEWS

Trump's return could shake up H-1B visa system

Immigration attorneys warn clients to prepare for stricter H-1B visa policies if Trump wins the 2024 election, advising immediate action.

By Patrick Thibodeau, Editor at Large

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As the 2024 U.S. presidential election looms, immigration attorneys are bracing for a potential second-term for former president Donald Trump, fearing swift and stringent actions that could impede employment-based immigration.

Trump's first term in the White House, which ended in 2020, left [H-1B visa critics](#) [disappointed](#) because he did not deliver major reforms to the employment-based system. Instead, he significantly frustrated the H-1B process, particularly with an uptick in denials and added paperwork to support visa petitions. President Joe Biden, who took office in 2021, reversed some of these actions, making it easier to navigate the visa petition system.

But now, Trump is running for president again, and the prospect of his victory in November is alarming to immigration attorneys. They believe that a new Trump administration will be better prepared and ready to take immediate action to curb immigration, including employment-based immigration.

"I expect things will probably get worse a lot more quickly than they did the first time around," said Sarah Schroeder, an immigration attorney at DiRaimondo & Schroeder in New York. She said increased barriers and delays in adjudicating high-skilled worker petitions could lead to more requests for evidence, slower processing times and even efforts to block pathways to legal immigration.

To prepare for a possible Trump administration, Tahmina Watson of Watson Immigration Law in Seattle said she is "advising all our clients that if you're eligible for something, file it now. Don't wait."

Many people believe the Biden administration has created a more favorable climate for visa-sponsoring employers. Still, some of this administration's actions might reopen political fractures over employment-based immigration that drove Trump's campaign in 2016.

When sponsoring an employment-based green card, employers must make a good-faith effort to advertise for a U.S. worker before filling the position with a foreign worker. However, the Biden administration has proposed adding STEM occupations, possibly including computer

engineering and software development, to the U.S. Department of Labor's Schedule A Shortage Occupation List. Jobs on this list are exempt from job advertising requirements.

Labor objects to Biden plan

The AFL-CIO, a federation of unions that represents more than 12.5 million workers, opposes expanding Schedule A. In a [letter](#) last week responding to a U.S. request for comments about the proposed expansion, the labor group cited AI-based disruptions to the tech workforce and tech layoffs as reasons for its opposition. It also said it "has watched too many employers claim they cannot find qualified workers only to lay off their employees, including members of our unions, and require them to train their foreign replacements as a condition for their severance."

Despite Trump's effort as president to frustrate the H-1B system, some things have remained the same. According to the nonprofit Economic Policy Institute, major offshore outsourcing companies, including India-based Infosys and Tata Consultancy Services as well as U.S.-based Cognizant Technology Solutions, remain among the [largest users of H-1B visas](#).

Although the denial rate for initial H-1B visas reached a high of [24% in 2018](#), according to the American Immigration Council, a research group that supports immigration, it fell to 2% in 2022 during the Biden administration.

The increased H-1B denial rate and scrutiny during the Trump administration had no effect on the annual visa cap of 85,000, which employers have filled every year.

John Miano, a fellow at the Center for Immigration Studies who has represented tech workers in court over visa issues, said that Trump "did two things in regard to H-1B that put him way ahead of his predecessors." First, he stopped the Tennessee Valley Authority, a federally-owned electric utility company, from [turning over 200 IT jobs](#) to contractors; and second, "he did not make things worse," Miano said.

Tech industry plan on H-1B visas

The tech industry is expected to continue pushing Congress to expand employment-based visa programs, including the H-1B work visa. It will cite the 2022 \$280 billion [CHIPS and Science Act](#), which aims to revive domestic semiconductor production, as creating demand for workers.

Observers expect critics of the industry's efforts to point to tech industry layoffs and the rising number of computer science graduates. In its [spring data](#), the National Student Clearinghouse reported that computer and information science enrollment at four-year institutions reached 629,000 students -- nearly a 10% increase from the prior year on top of a steadily rising trend.

When Trump took office in 2016, he slowed the visa system down but only brought about major reforms in the waning months of his administration. He proposed replacing the visa lottery's random distribution system with a salary ranking system, where employers are [prioritized based on their salary](#) offerings under the H-1B work visa cap. However, President Biden's administration never enacted the Trump plan.

If Trump wins in November, there is reason to believe the administration will try again with a wage-based distribution system. Project 2025, an effort by a long list of conservative groups to set a blueprint for a Trump transition, [recommends](#) in its "Mandate for Leadership: The Conservative Promise" that the H-1B program "be transformed into an elite program" to "bring in only the top foreign workers at the highest wages so as not to depress American opportunities."

Marcela Bermudez, an immigration attorney at Greenspoon Marder LLP in New York, said the Trump wage-based plan would disadvantage some companies, especially startups and smaller firms. "They're not necessarily going to start people at very high wages, but they are talent that we need that will grow," she said.

Alison Hitz, an immigration attorney at Clark Hill PLC in San Francisco, said it's up to Congress to change the immigration system and that presidents are limited in the changes they can make. However, administrative changes can "throw a wrench into the processing of cases," she said.

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Tahmina Watson
Immigration attorney, Watson
Immigration Law

For instance, premium processing for H-1B visas, which accelerated the handling of the visa, was suspended in 2017 by the Trump administration. In 2020, the Biden administration lifted the suspension.

Hitz said a problem with suspending premium processing is that if someone outside the U.S. is waiting for visa approval for a job, an employer might decide that it can't wait six to nine months for the case to be processed and move on.

Christopher Richardson, president and general counsel at BDV Solutions, which provides employers help with EB-3 unskilled visa green cards, said that if Trump wins, the visa approval process will "become a lot harder and probably more expensive."

"But," he added, "we've worked through the last Trump administration, and we'll survive and work through this one too."

Patrick Thibodeau is an editor at large for TechTarget Editorial who covers HCM and ERP technologies. He's worked for more than two decades as an enterprise IT reporter.

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