



Immigration Innovation Act of 2018 Quick Summary

H-1B Provisions

- **H-1B Cap:** 65,000 cap raised to 85,000; 20,000 set-aside for U.S. Master's and above is retained. Includes market escalator up to 195,000 and de-escalator based on prior FY, but not lower than statutory base. **(Sec. 101)**
- **Exemption for U.S. Masters +:** Includes an unlimited number of exemptions for individuals with a U.S. Masters or above (any field), if the employer attests that it has started or will start the green card process within one year. **(Sec. 101)**
- **H-1B Prioritization:** In FYs where enough petitions are received within the first 5 business days of the filing period to reach the cap, prioritizes H-1Bs as follows: (1) Individuals who have earned a U.S. master's or higher, who are subject to the numerical limitations; (2) Individuals who have earned a doctoral degree outside the U.S.; (3) Individuals who have earned a U.S. bachelors or higher in a STEM field; (4) Other petitions. **(Sec. 101)**
- **Penalties for Failure to Withdraw:** Imposes monetary penalties and debarment (for repeat offenders) for employers who have 5 or more cap-subject petitions approved in a FY, where the visa holder works in the U.S. less than 25% of the first year of approval. There are exceptions for timely withdrawal, but higher-volume users (at least 20 approved H-1Bs in the FY) who withdraw a percentage of approved petitions cannot avoid penalties (sliding scale). **(Sec. 101)**
- **Non-Displacement of U.S. Workers:** Prohibits employers from hiring an H-1B with the "purpose and intent" of displacing a U.S. worker or conditioning a U.S. worker's pay, performance review, etc. on his/her willingness to train an H-1B that has been hired with the "purpose and intent" of displacing the U.S. worker. Excludes situations where the U.S. worker is promoted, or voluntarily transfers or departs. Burden is on the government to prove the employer's intent in an enforcement action. **(Sec. 101)**
- **H-4 Employment Authorization:** Provides work authorization to H-4s where the H-1B has a pending or approved LC or I-140 petition. Requires the H-4 employer to certify that

it is offering and will pay the greater of the actual wage paid to similarly situated employees or the prevailing wage. (Sec. 102)

- **Limitation on Amended Petitions:** No amended petition required if (1) the employer is involved in corporate restructuring; (2) a new corporate entity takes over the interests and obligations of the petitioner, and no changes in employment; or (3) the H-1B moves to a new location with the same employer and the employer secures a certified LCA. (Sec. 103)
- **Deference.** Prohibits DHS and DOS from denying a subsequent petition, visa, or application for admission for H-1Bs and L-1s involving the same employer and employee unless there was (1) a material error; (2) a substantial change in circumstances; or (3) new material info. (Sec. 103)
- **Grace Period.** Provides 60-day grace period for H-1Bs whose employment ends prior to the end of the authorized period of admission. Nonimmigrant is deemed to retain legal status and new employer can file a petition to extend, change, or adjust status during this period. (Sec. 103)
- **Dependent Employers/Exempt H-1B Nonimmigrants.** (1) Creates new definitions of “Intending Immigrant” and “Covered Employer” and excludes “Intending Immigrants” employed by “Covered Employers” from calculations involving H-1Bs and L-1Bs; (2) Amends the definition of “Exempt H-1B Nonimmigrant” to exempt those who receive annual wages (including bonuses) of the higher of 105% of the occupational mean wage or \$100,000 (adjustable every 3 years, or have a Ph.D. (Sec. 104)
- **“Super Dependent” Employers.** Employers with more than 50 employees and more than 50% H-1Bs must always attest to and document evidence of recruitment and non-displacement (without consideration of exempt H-1B nonimmigrants). (Sec. 104)
- **New ACWIA Fees.** Increases base ACWIA fees according to size of employer (\$2,000 or \$4,000) and creates fee accelerator (4 levels) to collect more fees based on increases in the H-1B cap. (Sec. 401)

Employment-Based Immigrant Visas

- **Immigrant Visa Numbers.** (1) Eliminates per country limits for employment-based visas and increases per country limit for family-based visas to 15%; (2) Requires recapture of unused visas from FY 1993 to FY 2013; (3) Exempts from numerical limitations: dependents of EB immigrants, individuals with a U.S. STEM master’s or higher degree, individuals with an approved EB-1 petition for extraordinary ability or outstanding professor/researcher. (Secs. 201, 202, 203)
- **Adjustment of Status.** (1) Permits EB immigrants (and derivatives) with an approved I-140 to file for adjustment even if an immigrant visa is not immediately available by

paying a \$500 supplemental fee. Applications may not be approved until an immigrant visa becomes available.

(2) Amends INA §245(a) to state that an employment-based visa is “immediately available” if any employment-based visa number has not yet been issued for that fiscal year. (Secs. 202, 205)

- **Permanent Portability.** Removes the 180-day temporal requirement and permits portability to a same or similar occupation for individuals with a pending adjustment of status application or an approved conditional resident application (new INA §216B) with 3 annual reviews approved. (Sec. 204)
- **Conditional Immigrants.** Creates new employment-based conditional immigrant visa (35,000 per year) for individuals who (1) have a university degree; (2) have received an offer of employment from a qualifying U.S. employer; and (3) will satisfy the requirements of EB-1, EB-2, or EB-3. Sponsoring employers must (1) meet wage, non-displacement, and recruitment requirements; (2) fully participate in E-Verify; and (3) pay a \$10,000 fee (and processing fee TBD). H-1B dependent employers and debarred employers are excluded. Conditional residents must renew their status annually and must show they are working their way through the immigrant visa process. Includes provisions for changing employers, termination of conditional status, and removal of conditions. (Sec. 206).

Miscellaneous

- **Prevailing Wages.** Amends INA §212(p) to require the first level of wages to be no less than the mean of the lowest 50% of the wages surveyed. Permits the use of independent wage surveys that meet certain criteria. (Sec. 105)
- **Schedule A.** Requires a study to determine whether the occupations listed in Schedule A should be modified or expanded and publication of an NPRM if it is so determined. (Sec. 106)
- **Dual Intent for Students.** Allows “dual intent” for F-1 students. (Sec. 301).
- **Streamlining Procedures.** Require DHS to establish a pre-certification procedure for employers who file multiple petitions to streamline documentation submission and avoid duplication of documentation that is common to petitions. Requires DHS to promulgate regulations to allow electronic filing and document storage with USCIS. (Sec. 501)