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Immigration & Federal Relations Alert - Senate Immigration Bill To Impact Business, Technology And Defense Sectors

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On April 17, 2013, a bipartisan group of U.S. Senators known as the “Gang of Eight” introduced an immigration bill entitled the “Border Security, Economic Opportunity, and Immigration Modernization Act of 2013.”

The bill includes provisions that substantially increase the number of visas for highly-skilled workers, creates a new visa category for lower-skilled workers, eliminates the backlog for employment-based immigration, and authorizes significant resources to achieve border security.

The bill aims to increase the annual cap of certain employment-based nonimmigrant visas (H-1B) from 65,000 to 110,000 and the number may increase up to 180,000 depending on labor demands and the unemployment rate. In order to ensure that American workers are not displaced by H-1B workers, employers will continue to be required to pay the prevailing wage to H-1B workers and it has been proposed that the prevailing wage system be strengthened. Also in fiscal year 2014, companies will be banned from bringing in additional workers if more than 75 percent of their workers are H-1B or L-1 employees. The bill also provides for dual intent visas for all students who come to the U.S. on a bachelor or advanced degree program.

To ensure the U.S. has sufficient lower-skilled workers, the bill creates a new nonimmigrant category known as the W-Visa. Eligible recipients would be immigrants who come to the U.S. to perform services or labor for a registered employer and for a registered position. Beginning April 1, 2015, unless the Secretary of Homeland Security extends the start date, the maximum cap for four years would be 75,000 visas.

The bill proposes to exempt from the annual numerical limits multinational executives and managers; immigrants of extraordinary ability in the sciences, arts, education, business, or athletics; and doctoral degree holders in the science, technology, engineering and mathematics (STEM) fields.

The bill allocates a significant number of all employment-based visas to individuals holding advanced degrees in STEM fields, in particular. The bill also creates startup visas for foreign entrepreneurs seeking to establish a company in the U.S.

The bill provides \$3 billion to implement the Comprehensive Southern Border Security Strategy for achieving and maintaining effective control in all high risk border sectors along the southern border. The funds will be used for acquiring, among other things surveillance and detection capabilities developed or used by the U.S. Department of Defense; fixed,

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mobile, and agent portable surveillance systems; and unmanned aerial systems and fixed-wing aircraft and necessary and qualified staff equipment to fully utilize such systems.

The bill permits undocumented immigrants, who entered the U.S. before December 31, 2011 and who do not have a serious criminal record, to apply for a Registered Provisional Immigrant (RPI) status. This would permit an individual to work legally in the U.S. for any employer. RPI status would last for a 6-year term that is renewable if the worker has not committed any acts that would render the worker deportable.

The Senate bill is likely to undergo changes as other U.S. Senators and constituents weigh in on this important bill. A House bill is also expected to be unveiled soon. If the bills can pass their respective chambers, then bicameral negotiations would begin in an attempt to pass a final comprehensive immigration reform bill for the President to sign into law.

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