

Manufacturing Industry's Labor Shortage and Immigrant Workers

By Michael H. Neifach & Kimberly M. Bennett

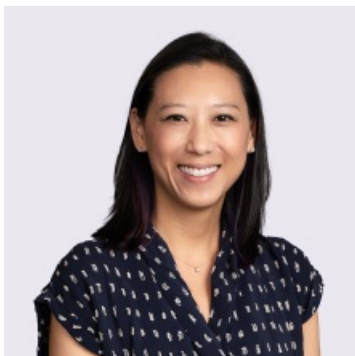
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The gap between jobs needing to be filled and the skilled talent pool capable of filling them continues to grow wider in many industries, particularly in the U.S. manufacturing industry.

The ability to retain labor from abroad is essential to closing this gap, helping to replace an aging workforce, and infusing high skills into the market — boosting innovation and technological change, according to the National Academies of Sciences, Engineering and Medicine's 2016 [*The Economic and Fiscal Consequences of Immigration*](#)

Since 2020, and following former President Donald Trump's immigration actions on the heels of the COVID-19 outbreak, however, the inflow of labor from abroad has nearly ground to a halt. Yet, the search for skilled talent remains the top concern for 89 percent of executives in manufacturing businesses. The manufacturing industry continues to face unique challenges, according to Deloitte's [*2016 global manufacturing competitiveness index*](#), including shifting skill sets due to the introduction of advanced technologies, misperceptions about manufacturing jobs, and the retirement of an aging workforce.

Reform of the immigration system that is so critical to the manufacturing industry is one of the Biden administration's priorities. On the same day he took the oath of office, President Biden announced several measures to help ensure a stable workforce, including rescinding Executive Order 13780 (a.k.a. the "Muslim ban") and strengthening the Deferred Action for Childhood Arrivals (DACA) program.

Responding to the DACA action, National Association of Manufacturers (NAM) President and CEO Jay Timmons [said](#), "Manufacturers are very encouraged by today's critical first step The broad goals of the Biden plan align with many of [NAM's] [We] look forward to working with the Biden administration to move a comprehensive immigration reform plan through Congress."

Executive Orders, Agency Actions

The administration quickly followed with other executive orders and agency actions that provide additional avenues for hiring and retaining skilled foreign workers, who U.S. Citizenship and Immigration Services (USCIS) categorizes as temporary (nonimmigrant) workers. The orders and actions include:

- An executive order titled "[Ensuring the Future is Made in All of America by All of America's Workers](#)," revoking the prior administration's "Buy American and Hire American" Executive Order (BAHA). BAHA was the foundation for historically high levels of Requests for Evidence and denials of nonimmigrant visa petitions;
- Withdrawing a proposed regulation to eliminate the H-4 Employment Authorization Document (EAD) program for work authorization to spouses of certain H-1B workers

applying for Green Cards;

- [Rescinding](#) the USCIS “Guidance Memo of H-1B Computer Related Professions” that led to inconsistent H-1B and H-1B1 adjudications; and
- Delaying the effective date of a final rule that will dramatically raise prevailing wages for H-1B, H-1B1, E-3, and PERM cases.

On February 24, 2021, President Biden revoked Presidential Proclamation 10014 (“Suspension of Entry of Immigrants Who Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak”), making it possible, once again, to bring talented employees to the United States on a permanent basis. However, he did not rescind the companion Presidential Proclamation 10052 that has made it difficult to bring employees into the United States in nonimmigrant H, L, or J status.

NAM was a key participant in ongoing litigation seeking to limit the impact of these restrictions, *N.A. of Mfrs. v. U.S. Dep’t of Homeland Sec.*, No. 20-cv-04887-JSW (N.D. Cal. Oct. 1, 2020). The plaintiffs were successful in obtaining a preliminary injunction that exempted members of the plaintiff organizations (including NAM, the U.S. Chamber of Commerce, the National Retail Federation, TechNet, and Intrax, Inc.) from the nonimmigrant restriction.

Legislation

The Biden administration continues to review numerous regulations and policy changes from the previous administration. However, fundamental reform of the immigration system will require legislation. To that end, on February 18, 2021, Senator Robert Menendez (D-N.J.) and Representative Linda Sanchez (D-Cal.), with President Biden’s backing, introduced the U.S. Citizenship Act of 2021, a comprehensive proposal to revamp the system.

The bill would give individuals who entered the United States as minors (a.k.a. “Dreamers”), individuals with Temporary Protected Status (TPS), and agricultural workers an eight-year path to citizenship. The bill also would significantly increase the number of employment-based green cards available each year and eventually eliminate per country caps, exempt U.S. doctoral STEM graduates from the numerical limitations, and create a pilot program for regional economic development that would allow an additional 10,000 immigrants per year based on localized economic development strategies.

Passing a comprehensive immigration bill will be difficult. The administration and congressional leadership [will more likely](#) select pieces of the bill with broader appeal to move through Congress more quickly, while continuing to push for the more comprehensive overhaul. Notwithstanding the challenges ahead, real reform will benefit the manufacturing industry and drive economic growth.

Please contact a Jackson Lewis attorney with any questions about U.S. work visas and requirements.

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