



The executive action Obama should take on immigration

By Alex Nowrasteh
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President Obama is currently planning numerous executive actions on immigration. White House spokesman Shawn Turner said, "[t]he president has not made a decision regarding next steps, but he believes it's important to understand and consider the full range of perspectives on potential solutions." Most observers are interested in how the president's executive actions could affect unlawful immigrants, but his actions could also improve the legal immigration system.

One possible reform through executive action could increase the number of employment-based green cards available to highly skilled workers without changing the law. How is that possible?

Under current immigration law, about 140,000 green cards are set aside for highly skilled workers with job offers from American companies. But only about 45 percent of those green cards went to workers in 2013, with the rest going to their families. The government currently counts family members against the numerical green-card quota for workers.

Immigration attorneys have acknowledged that the statutes are unclear and that there is no legal basis for counting family members against the worker cap. "Neither the law nor the regulations authorize or require family members to count against the employment-based green card cap," immigration attorney Matthew Kolken of Buffalo, N.Y., told me.

Immigration attorneys Gary Endelman and Cyrus Mehta concur. They wrote that "[t]here is nothing here [in the law] that explicitly authorizes or mandates the counting of family members" against the employment-based green card cap. Families of workers are counted against the worker cap, apparently, because of bureaucratic inertia.

Because counting family members against the worker cap is a bureaucratic creation, President Obama could likely reverse it through an executive order or through asking the bureaucracy to reevaluate its interpretation of the statute. Ideally, the bureaucracy would reinterpret the statute and propose a regulation that would only count workers against the cap, soliciting public comments along the way. Since such a reinterpretation is reasonable based on the unclear statute, such a regulatory move would be normal — government agencies do it every day.

By not counting family members against the cap, the number of employment-based green cards issued every year would more than double. Such a change in counting green cards would not prevent the families of green card workers from coming; it would merely stop counting them against the cap.

These types of green cards are set aside for highly skilled foreign workers who would greatly benefit the American economy if they were allowed to work here. First, such a reform would increase American productivity. Between 1990 and 2010, skilled immigrants in the science, technology, engineering and mathematics sectors of the economy accounted for at least 30 percent of the aggregate productivity growth in the U.S. economy and could have accounted for as much as half of that growth. Faster productivity growth increases American wages and economic growth broadly.

Second, highly skilled immigrants are known for their entrepreneurship. In recent years, more than half of the technology startups in Silicon Valley were founded or cofounded by highly skilled immigrants. Specifically, 35 percent of semiconductor startups, 32 percent of computer and communication startups, and 28 percent of software startups were founded or cofounded by immigrants. These firms hire Americans and create goods and services that improve our lives.

One example is the telecommunications firm LinkAmerica, started by Andres Ruzo in 1994. Ruzo, who describes himself as "Peruvian by birth, Texan by choice," came to the United States to study engineering and was fortunate enough to navigate the legal immigration system. According to Ruzo, he entered businesses because "I knew I could do it cheaper, faster and provide good customer service. I took a lot of market share very quickly."

Despite our restrictive and backlogged legal immigration system for highly skilled workers, Ruzo was able to follow his American dream — to all of our benefit. But that raises the question: How many highly skilled immigrants like Ruzo were turned away from our shores because government immigration regulations prevented them from founding their firms here?

Allowing more highly skilled immigration via executive order or reinterpreting the unclear statute would be an economically beneficial reform that is likely within President Obama's power. As the laws and regulations currently stand, there is no legal justification for counting the family members of highly skilled immigrant workers against the cap. Such an executive order or agency reinterpretation could go a long way toward allowing more highly skilled immigrants like Andres Ruzo and others to come here and expand our economy.

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