

# Client Update: Immigration consequences of COVID-19

Lori Chesser  
Davis Brown Law Firm  
Des Moines

# What we will cover

- Presidential Proclamation and other travel restrictions and their consequences
- Employment-related immigration consequences
  - Hiring
  - Remote work
  - Furloughs/wage reductions
  - Layoffs
  - Future considerations

# Presidential Proclamation

- Did NOT ban all immigration
- Applies to applicants:
  - Physically outside the U.S.
  - Applying for an immigrant visa (permanent residence)
  - Not covered by an exception

# Presidential Proclamation

- Does NOT apply to:
  - Temporary (“non-immigrant”) visas (H-1Bs, L-1, TN, etc.)
  - “Green card” holders
  - Applicants for a “green card” who are in process and using a travel document for entry
  - Persons with an immigrant visa issued before April 24, 2020

# Presidential Proclamation

- Does NOT apply to:
  - Spouses of U.S. citizens
  - Children of U.S. citizens (under 21), including prospective adoptees
  - EB5 investors
  - Healthcare professionals who will help with COVID-19 crisis
  - Others whose entry would be in the national interest or further important U.S. law enforcement objectives

# Presidential Proclamation

- Does NOT apply to:
  - Members of the U.S. Armed Forces and their spouses and children
  - Certain Iraqi and Afghan translators and interpreters
  - Those seeking asylum or refugee status

# Presidential Proclamation

- Immediate effect is minimal because the U.S. consulates remain closed to all except healthcare professionals and other emergency needs
- Initial suspension period is 60 days (June 23). It may be extended.

# Presidential Proclamation

- Longer term effects could be substantial
  - Categories that are affected account for approximately 30% of all immigration to the U.S.
  - In current form, it affects family-sponsored categories the most.
  - Language calls for review of other categories to consider for suspension.
  - Limited to entry to the U.S.



# Presidential Proclamation

- Take-away: Advocate!
- Proclamation is not based on health concerns but on economic concerns
- False “zero-sum” game theory
- Tell your story – we can help!

# Other Travel Restrictions

- “Muslim” travel ban still in place
- Unsubsidized health insurance travel ban – enjoined by a lawsuit
- 14-day entry suspension from China, Iran, UK, Ireland, and “Schengen Area”
  - Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and Switzerland.
- Canadian and Mexico border closing for all but “essential travel”

# Other Restrictions/Relaxations

- USCIS office closed until June 4, 2020
  - No interviews
  - Approving *some* petitions without interview
- “Visa Waiver” entrants may request a 30-day extension if justified
- *Some* RFE responses are given more time
- Scanned signatures allowed

# Questions?

- *Does Proclamation affect PERM process?*
- *Because the Proclamation excepts healthcare workers, can my green card be expedited?*
- *Will the Proclamation affect the waiting lines?*
- *Others?*

# Hiring

- I-9s for remote hiring
  - Use an agent OR
  - ICE guidance allows for remote review of documents in *limited circumstances*
    - Office must be operating remotely
    - Must physically review and update I-9 timely when normal operations resume
    - Limited time (May 19 or when national emergency ends – unless extended)

# Hiring

- E-Verify
  - Still due in 3 days
  - If late, choose “other” and enter “COVID-19” as a reason
  - Must provide time to resolve TNCs (tentative non-confirmations) because Social Security and USCIS offices are closed. Cannot terminate employment while E-Verify is in an “interim case status”

# Hiring

- Suspension of Premium Processing
  - Transfers slower – although processing times are surprisingly fast
  - H-1B allows for “portability”
  - An expedite may be granted if the candidate’s work will address the COVID-19 crisis (national interest) – results are spotty

# Remote Work

- H-1B, H-1B1 and E-3 categories all have labor condition applications (LCAs) that specify a worksite. If new location is a “worksite” compliance steps are necessary
  - Posting if within reasonable commuting distance
  - Potentially an amendment
- Other categories – “material change”?



# Furloughs/Wage Reductions

- H-1B, H-1B1 and E-3 includes wage commitments in the LCA
  - Will the reduction take the wage below the “prevailing” wage?
  - Will the reduction take the wage below the “actual” wage?
  - Will foreign workers be treated differently than U.S. workers?
- An amendment that would include part-time is possible

# Furloughs/Wage Reductions

- Other categories – “material change”?
- Green card process?
  - If temporary, is less likely to affect the process
  - If in the middle of the PERM – consult with us
  - If ability to pay is an issue – or becomes an issue - the process could be in jeopardy (net current assets may also be considered)

# Layoffs

- Return transportation offer for H-1Bs
- Withdraw the LCA (if applicable) and status approval
- 60-day grace period in which to change to another status or to a new employer (discretionary)
- Layoffs can affect an active PERM process
- More scrutiny of PERMs is possible in general

# Unemployment Compensation

- Iowa rules allow potential eligibility during the crisis
- Many will not qualify because of 18-month service requirement
- If qualified and no fraud – no effect on “public charge” later (assuming no other changes and employment regained)

# Future Considerations

- Review of other categories in which to impose an entry suspension is on-going during the next 30 days
- Unlikely that employment will rebound that quickly
- Advocacy is needed to forestall action until we see the longer-term effects – we can help!

# Questions?

- *Is ICE still auditing I-9s?*
- *How do I comply with ICE I-9 guidance if I use an electronic I-9 system?*
- *Others?*

# Thank You

Lori Chesser

LoriChesser@DavisBrownLaw.com

515.288.2500