

Washington Update: Employer's Guide to Immigration Restrictions

*William A. Stock
Elise A. Fialkowski
Michele G. Madera
H. Ronald Klasko*

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2

Agenda

- The President's Latest Travel Ban
- Understanding Who Is Not Banned
- Obtaining Exceptions To The Ban
- Litigation To Challenge The Ban
- Alternatives For Banned Employees
- Further Regulatory And Enforcement Changes
- Other Immigration Changes (DACA, OPT, Etc.)
- Q&A

3

The Latest Travel Ban

- Extends duration of immigrant visa ban
 - Primarily affects family-based immigrants and diversity lottery winners
- New ban on H-1B, H-2B, L-1, certain J-1 categories
- Applies to persons outside the United States on June 22, 2020 if they do not have a valid visa or travel document on that date

4

Understanding Who Is Not Covered

- Employees currently in the US in any status
- Employees currently out of the US but with an unexpired visa stamp
- Many J-1 nonimmigrants: Professors, Researchers, Residents/Fellows
- Nonimmigrants not listed (E, O, TN, B, etc.)
- Open issues

5

Obtaining Exceptions To The Ban

- Exemption procedure is not yet defined
- Standard is tighter than prior travel ban
 - “National Interest” is most relevant
 - Healthcare workers **directly** treating COVID patients
 - Medical researchers **directly** researching COVID
 - “Necessary to facilitate the immediate and continued economic recovery of the United States”
- Reasonable expectations for timing of waivers

6

Litigation To Challenge The Ban

- Did the President exceed his statutory authority?
- Practical necessity: Plaintiff companies or trade organizations
- Timing considerations in litigation and seeking early relief

7

Avoiding The Ban: Visa Alternatives

- Change of status instead of consular notification
 - This year's H-1B cap cases
 - Entering with non-banned visas and filing after arrival
- Obtaining O-1 visas
- Using J-1 Researcher and Resident/Fellow
- Aggressively seeking “national interest” waivers
- E-2 visa options

8

Further Reforms Planned By Regulation

- Re-write H-1B rules to increase minimum salaries
- Changes around H-1Bs for contractors and new obligations for companies who host contractors
- Undertake DOL-directed investigations
- Revise the Labor Certification process
- Limit work authorization for asylum applicants and others whose applications are pending
- Possible legal challenges

9

Other Upcoming Changes Expected

- DACA program wind-down
- Changes to F-1 student visas, including CPT/OPT
- Eliminating H-4 employment authorization

10

Key Takeaways

- Current Nonimmigrant workforce is not immediately impacted; status can be extended and progress to green card continued
- New arrivals from abroad will require creative solutions
- Travel remains risky due to Coronavirus restrictions and slow return to normal processing
- Regulatory changes and restrictions are coming and may be implemented as “interim” rules

11

Questions?



12

For Further Information



H. Ronald Klasko
rklasko@klaskolaw.com



William A. Stock
wstock@klaskolaw.com

13



For Further Information



Elise A. Fialkowski
efialkowski@klaskolaw.com



Michele G. Madera
mmadera@klaskolaw.com

14



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15



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