

In The News

Business Immigration's Uncertain Path Post-Travel Ban Ruling

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The U.S. Supreme Court's ruling Tuesday to uphold President Donald Trump's travel ban raises more questions than it answers for business immigration practitioners who have unsuccessfully pursued waivers for affected clients and are trying to offer them sound advice in the absence of any agency guidance.

The ruling allows the most recent version of the ban — which prevents nationals of Venezuela, Syria, Libya, Yemen, Somalia, Iran and North Korea from entering the U.S. — to go into full effect. It offers little practical guidance, however, as to how the government should go about implementing the ban, with only Justice Stephen Breyer urging in his dissent that the government establish a functioning waiver program.

Immigration attorneys, therefore, are awaiting further guidance from immigration agencies as to how they can successfully obtain waivers for clients who are stranded abroad or who are still in the U.S., but have had to give up travel. Until they receive that direction, they are counseling clients to be cautious about travel, even if they hold a green card, and taking things one case at a time.

Waiting For Agency Guidance

Ally Bolour, who has his own immigration practice and serves on boards for the American Immigration Lawyers Association and American Immigration Council, said that he has applied for waivers and gotten zero. He said that consulates have been holding waiver cases until the high court ruled in the travel ban case, so he is expecting a "wave of denials" soon.

"The waiver process is very arbitrary," he said. "Consular officers in the [United Arab Emirates] and Turkey have eyeballed petitions and the person and denied the waiver. There is no formal process."

U.S. Department of State data published on Tuesday indicate that waivers have been granted to only 2 percent of visa applicants over the course of almost five months.

Hector A. Chichoni, chair of Duane Morris LLP's south region immigration practice, said that waivers have been hard to come by and that there is no guidance on what a successful waiver petition looks like. And U.S. Customs and Border Protection officers "make up the guidance when they don't have it already," he said.

"I've had 22 years in this business and I'm still thinking, 'What is going on here?'" he said. "But this shall too pass. There will be guidance. This is a country that is ruled by law, in the end."

Advising Clients Not to Travel

Jonathan Meyer, a partner at Sheppard Mullin Richter & Hampton LLP and former deputy general counsel of the U.S. Department of Homeland Security, said that individuals from countries targeted by the travel ban who are currently in the U.S. still have to consider precautions. He said that H-1B skilled worker visa holders and beneficiaries of other professional visas are "essentially grounded from leaving the U.S."

Meyer noted that Iranians have been the most impacted by the ban in the business immigration context. Even

Iranian students and scholars, who hold F-1 and J-1 visas and are not subject to the ban, are not returning home to visit family, even for short vacations, because they will have to apply for new travel visas to re-enter the U.S., which are subject to long delays, he said.

Chichoni said that he is even advising individuals from affected countries who have been in the U.S. for more than a decade and have green cards not to travel. While they are not directly affected by the ban, he said that it does not hurt to be careful.

Chichoni said that he has been looking at his clients on a case-by-case basis to determine if there is anything in their record that could cause them problems at the border. For example, he said prior arrests might render an individual inadmissible and cause them to be stripped of their green card.

"A lawyer's role as a counselor has to kick in," he said. "We're living in difficult times. If you don't have to travel, then don't travel. You have to prepare for the worst."

Irina Plumlee, a shareholder at Munsch Hardt Kopf & Harr PC, said that advising against travel, even in the case of green card holders, "isn't going too far at all." She pointed out that foreign nationals often do not realize how consular officers charged with determining whether they can enter the country have "minimal training, but a lot of discretionary authority," meaning they may be inclined to deny entry to any individual who carries a passport of one of the banned countries.

Counseling Hard-Hit Industries

Chichoni said students at universities that his firm services have been particularly worried about the implications of the ruling in terms of how they can prove that they have legitimate ties to their schools. He noted that the high court's ruling permits individuals to enter the U.S. so long as they can prove a relationship with a U.S. organization, but it is still unclear how that translates practically. The medical profession is also among the top industries impacted by the ban. Syria and Iran are among the top 10 nations that send doctors to the U.S., but the travel ban has "chilled the hiring process" at hospitals, Bolour said.

He said one of his Iranian clients is applying for medical residency programs in the U.S. and has noticed that hospitals are wary of taking on employees who pose a risk of being stranded abroad and unavailable, potentially putting the lives of their patients at risk. He said the U.S. is already short 100,000 doctors.

Bolour, who is based in Los Angeles, also counsels Iranian actors who would normally be granted O visas for extraordinary achievement in the arts, but have been denied entry to the U.S. under the ban. He said that production companies have been faced with the choice of having to either transfer projects overseas in order to include Iranian talent for specific shoots or else recast roles.

"A lot of these people have large personalities and they refuse," he said. "If they're given a waiver because of their namesake and if their supporting crew can't come, they just won't come out of pride."

Bolour said that immigrant investors from affected countries are simply taking their business elsewhere, often to Canada and Australia, which have adopted investor-friendly policies in recent years.

"Families might be willing to wait, but it's not going to work for business visas for time constraints," he said. "We're just losing them, all of them."

By Nicole Narea

Primary Contacts



Irina Plumlee

Dallas
214.855.7513
iplumlee@munsch.com

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