The future of global mobility and immigration
Aug. 19, 2020
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Agenda

6-12 COVID-19 impact on global mobility and relief measures

13-14 Trends in global mobility

16-32 Impacts on U.S. immigration and mobility
COVID-19 IMPACT ON GLOBAL MOBILITY
COVID-19 impact on global mobility

• Travel restrictions, stay-at-home orders and quarantine requirements forced employees to work remotely

• Displaced employees may create tax obligations at the individual and corporate level if they conduct work from unexpected locations

• Global employers must evaluate how best to carry out their business operations amidst the disruptions
Considerations for a globally mobile workforce

• Unplanned tax filings
• Unexpected tax residency
• Permanent establishment creation
• Social tax implications
• Local payroll obligations
• Double taxation may occur
Relief measures

• Possible IRS relief but must qualify
  – Nonresident aliens holding out in the U.S. due to travel restrictions may be able to avoid creating U.S. tax residency
  – Returning U.S. citizens and resident aliens who would have met the Foreign Earned Income Exclusion had it not been for COVID-19 may still qualify

• Navigating relief provided by local authorities

• OECD guidance
International assignee issues with CARES Act recovery rebates

• The amount of the rebate to be paid is determined based on a taxpayer’s AGI level

• Assignment related income can impact the amount of rebate received by an assignee
  – U.S. nationals may receive a different rebate amount because assignment related income or deductions impacted their AGI
  – Foreign national employees on assignment in the U.S. may receive a rebate as a result of their assignment.

• An analysis around how an assignee’s rebate was affected because of the assignment may be needed
Policy changes should be considered

- Employers may wish to revisit global mobility policies
  - Develop protocol in the event of future global disasters or emergencies
  - Ensuring appropriate safeguards in place
  - Tracking remote workers

- Ensure employees feel supported through the disruptions

- Tax equalization policy may need to be updated
Post COVID-19 trends in global mobility

1. Shift to short-term business travel
2. Tracking a remote workforce
3. Increased focus on analytics
4. Increased reliance on technology
5. Increased connectivity
People considerations for the future of mobility

• Do our policies, processes, and/or strategy need to be re-evaluated to address the new way in which we work?

• Should you allow employees to work from any location?

• Considerations of shifting to a ‘work anywhere’ environment:
  – What impact will this have on productivity, morale and employee well-being?
  – How can we maintain the human connection?
  – How will we embrace technology?
COVID-19 IMPACTS ON U.S. IMMIGRATION & MOBILITY SECTION BREAK
COVID-19 impacts on U.S. immigration & mobility

COVID-19 Travel Regulations Map* (powered by Timatic)

18 August 2020 02:30:06 UTC

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What we’ll discuss:

• U.S. government-imposed restrictions and limitations affecting global mobility
  – Geographic-based travel restrictions
  – Labor market-based visa restrictions
  – Limitations on Consular and Passport services

• Strategies for navigating these restrictions

• Immigration compliance issues related to stranded employees and remote work
U.S. government-imposed travel restrictions

Geographic-based travel restrictions:

Blanket restrictions on travel from specific countries

Presidential proclamations have barred foreign nationals from entering the United States if they have been in one of the following countries 14 days prior to their attempted entry:

- China
- Iran
- The Schengen Countries
- UK
- Ireland
- Brazil
Geographic-based travel restrictions:

**Blanket restrictions on travel from specific countries**

- U.S. citizens or permanent residents not affected
- Preliminary travel to a non-listed country is also a strategy
- Employers can apply for a National Interest Exception (NIE) to allow their foreign national employee to enter the US despite the restrictions
- Expect strict scrutiny on NIE requests
U.S. government-imposed travel restrictions

Geographic-Based Travel Restrictions:
National Interest Exceptions

- Available only for business travelers, investors, treaty traders, academics and students traveling from the Schengen countries, UK and Ireland (not China, Iran or Brazil)
- Must contact the U.S. Consulate to apply for NIE
- Must demonstrate that proposed travel will provide a significant economic or public health benefit to the U.S.
U.S. government-imposed travel restrictions

Geographic-based travel restrictions:
Nonessential travel between the United States, Canada and Mexico

• Recently extended to Sept. 21, 2020
• Only applies to land border entries
• Employees traveling to work in U.S. are considered essential travelers; not restricted
• CBP continues to process new Canadian TN and L-1 applications at ports-of-entry
U.S. government-imposed travel restrictions

Labor market-based visa restrictions:

**April 22 proclamation suspended the issuance of certain immigrant visas**

- Effective until December 31, 2020
- Prohibits the issuance of new immigrant visas, including EB-1, EB-2 and EB-3 employment-based categories
- Healthcare and other workers supporting Covid-19 efforts are exempted; NIE very limited
- Green card sponsorship for U.S.-based employees is still permitted (PERM, I-140, I-485)
U.S. government-imposed travel restrictions

Labor market-based visa restrictions:

**June 22 proclamation suspends the issuance of certain nonimmigrant visas**

- Effective until December 31, 2020
- Only suspends the issuance of new L-1, H-1B, H-2B and some J-1 work visas (also dependents)
- Visa categories not affected: B-1, E-1, E-2, E-3, O-1, TN and F-1 (including CPT/OPT)
- Employees with valid visas or in the United States on June 24 not affected; Canadians also not affected (visa exempt)
- National Interest Exceptions can be requested
U.S. government-imposed travel restrictions

Labor market-based visa restrictions:
National Interest Exceptions | H-1B

Four NIE Categories for H-1B Visa Applicants:

1. Public health
2. Request by U.S. government agency
3. Resume ongoing employment
4. Continued economic recovery of the U.S.*

*Must meet 2 of 5 eligibility criteria
Criteria for “continued economic recovery” NIE

- Continuing need for the H-1B employee
- Senior-level position or unique/vital duties or specialized qualifications required to meet critical infrastructure need (defined in next slide)
- Wage exceeds DOL prevailing wage by 15%
- Education/training/experience demonstrates unusual expertise in the specialty occupation
- Financial hardship to employer if visa denied
U.S. government-imposed travel restrictions

Labor market-based visa restrictions:
National Interest Exceptions | H-1B

Critical Infrastructure Sectors:
Chemical, communications, dams, defense industrial base, emergency services, energy, financial services, food and agriculture, government facilities, healthcare and public health, information technology, nuclear reactors, transportation, and water systems.
Labor market-based visa restrictions:

National Interest Exceptions | L-1A

Four NIE Categories for L-1A Visa Applicants:

1. Public health
2. Request by US government agency
3. Resume ongoing employment
4. Critical business need*

*Must meet 2 of 3 eligibility criteria
Labor market-based visa restrictions: National Interest Exceptions | L-1A

Criteria for “critical business need” NIE

- Senior-level executive or manager
- Long tenure with company indicating substantial knowledge and expertise specific to the organization
- Will fill a critical business need for a company meeting a critical infrastructure need
- **Note**: New office L-1As must meet 2 of 3 criteria and show new office will employ 5+ U.S. workers
U.S. government-imposed travel restrictions

Labor market-based visa restrictions:
National Interest Exceptions | L-1B

Four NIE Categories for L-1B Visa Applicants:
1. Public health
2. Request by U.S. government agency
3. Resume ongoing employment
4. Critical business need*

*Must meet all 3 eligibility criteria
U.S. government-imposed travel restrictions

Labor market-based visa restrictions: National Interest Exceptions | L-1B

Criteria for “critical business need” NIE

• Applicant’s job duties and specialized knowledge will provide significant/unique contributions to the employer

• Applicant’s specialized knowledge is specifically related to a critical infrastructure need

• Long tenure with the company indicating a substantial knowledge/expertise within the organization that would require extensive and financially-burdensome training to replicate
Department of State travel limitations:

**Limited Visa & Passport Services**

- Routine visa services at U.S. Consulates worldwide were suspended in March, except for emergency visa appointments
- On July 14, DOS announced a phased-in, post-by-post resumption of routine visa services
- Even as visa services resume, expect significant appointment delays (2-3 months)
- Passport services also resuming; expect delays
Immigration Compliance Issues Related to Stranded Employees and Remote Work

- Employers must assure stranded employees keep valid immigration status via EOS/COS, Satisfactory Departure
- Employers must continue to satisfy I-9 and E-Verify obligations for employees working remotely
- Changes in employee worksite locations, including working from home, can trigger new LCA posting/filing and USCIS reporting obligations for H-1B and E-3 employees
- Reductions in employee work hours and/or pay can trigger new LCA posting/filing and USCIS reporting obligations
THANK YOU FOR YOUR TIME AND ATTENTION
QUESTIONS AND ANSWERS
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