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Revived Travel Ban Puts Employers, Immigrants In A Bind

By **Allissa Wickham**

Law360, New York (December 6, 2017, 10:27 PM EST) -- With the U.S. Supreme Court allowing President Donald Trump's third travel ban to fully take effect, attorneys say affected individuals and businesses should brace for fallout, such as being unable to reunite with loved ones, attend business meetings, or sponsor immigrants for green cards in some cases.

In a sudden move, the Supreme Court **on Monday** allowed the president's **third travel ban** to take effect while the appeals process plays out, staying two blocks on the policy that had been issued by district courts in Hawaii and Maryland.

The effect will be almost immediate. U.S. Department of State spokeswoman Virginia Elliott told Law360 the agency will begin "fully implementing" the travel ban proclamation at the "opening of business," local time, on Friday. A department official also stressed to Law360 on Wednesday that visas will not be revoked because of the ban, and the restrictions aren't meant to be permanent.

"The suspension of entry in the proclamation does not apply to individuals who are inside the United States or who had a valid visa on the effective date of the proclamation, as defined in Section 7 of the proclamation, even after their visa expires or they leave the United States," the official said.

A U.S. Department of Homeland Security spokesperson did not respond to an inquiry about whether there would be additional guidance about the travel ban's implementation.

The latest version of the ban doesn't have a time limit, and imposes restrictions on nationals of eight countries — Chad, Iran, Libya, North Korea, Yemen, Syria, Somalia and Venezuela — six of which have Muslim majorities. The entry limits vary by country, but what is consistent, for all but Venezuela, is a ban on those countries' nationals entering as immigrants — that is, people who are allowed to live in the U.S. permanently and receive green cards.

Additionally, many of the countries have entry restrictions on temporary travel. Chadian, Libyan and Yemeni nationals are blocked from entering on B-1 business or B-2 tourist visas, while temporary entry is completely suspended for those from Syria and North Korea.

Iranian nationals, meanwhile, are blocked from entering the U.S. in basically all temporary immigrant categories, except when it comes to student F or M visas, and exchange visitor visas. As for Venezuela, only certain government officials and their family members were hit with travel restrictions.

Legal onlookers generally feel this version of the ban may have a better chance of sticking. Notably, only two justices dissented from the decision to grant the stays on Monday, and the court didn't provide an exemption for people with ties to the U.S., as it did for the last travel ban **back in June**.

"Justices [Elena] Kagan and [Stephen] Breyer both voted with the conservatives — I think it's very worrisome to people who are challenging the ban," said Stephen Legomsky, a professor emeritus at Washington University School of Law and a former chief counsel at U.S. Citizenship and Immigration Services.

So with the travel ban going into effect now, both companies and families will be impacted, according to attorneys. Susan Cohen, chair of the immigration practice at Mintz Levin Cohn Ferris Glovsky and Popeo PC, said that for both immigrants and their employer or family sponsors in the U.S., the bar on immigrant visas is "devastating."

"Families have been looking forward to being united and making concrete plans that now have been stymied," Cohen said in an email. "There is a huge negative emotional impact to this for everyone involved. It is traumatic to have the rug pulled out from under you when everything was on track for finishing a green card process overseas."

Temporary travel will also be thrown off for foreign employees or individuals who simply want to visit the U.S., attorneys said. Jorge Lopez, an attorney at Littler Mendelson PC, noted that people who may be based in Europe or Asia may not be able to come for business meetings.

"For those folks, we might be seeing Skype and ... other third-party software being used as a way to basically conduct those meetings, because they're not going to be able to get those visas," Lopez said.

And for Iranian nationals in particular, business visas like H-1Bs for skilled workers or L-1 visas for company transfers, will no longer be available. However, because of the exemption for student visa holders from Iran, it could still be possible for those individuals to enter the country and change their visa status later, noted Ashkan Emami of Path Law Group.

"The one thing that's sort of a saving grace in all of this is that students are exempted, the exchange visitors are exempted," Emami said of Iranians. "So there's a possibility that if you're a student, you can come here and study in university, and then adjust your status or change your status while you're already here."

For employers seeking to help employees who are potentially affected by the ban, Ian Macdonald of Greenberg Traurig LLP said it's important to make sure they go about identifying those workers legally, so as not to take part in "discriminatory behavior."

"You send out an email that essentially says, 'This news event has occurred. If you need our help, we are here for you,'" Macdonald suggested. "Rather than, 'Will all individuals from these countries please report to us.'"

--Editing by Mark Lebetkin and Catherine Sum.