

## Focus Shifts To Ties With U.S. In Latest Travel Ban Twist

By **Allissa Wickham**

Law360, New York (June 26, 2017, 10:11 PM EDT) -- With the U.S. Supreme Court allowing President Donald Trump's travel ban to be enforced against people who don't have a clear link to the U.S., the question now becomes what exactly will qualify as a "bona fide relationship," with experts predicting potential confusion, visa delays and additional litigation ahead.

In closing out its latest term on Monday, the Supreme Court threw something of a curveball in the saga of Trump's **revised travel ban**, which seeks to temporarily bar nationals from six Muslim-majority countries.

On top of agreeing to hear the dispute this fall, the court narrowed the block against the ban, ruling that it can't be enforced against people who have "a credible claim of a bona fide relationship" with an individual or entity in the U.S., but that everyone else was subject to the executive order.

"They've said if you do not have any sort of substantial ties to this country, the ban will apply. So, if people from these six countries have family members here, or have a professional relationship here, they will be allowed still to come in," explained Jon Meyer of Sheppard Mullin Richter & Hampton LLP. "But if they do not, they won't."

And while the high court gave examples of qualifying relationships, attorneys noted that there may still be gray zones, and that plenty of discretion will likely be given to consular officers.

"The court gave several examples of what does constitute such a relationship, but everyone's facts are slightly different, and much will be left to the discretion of consular officers and immigration officials at the ports of entry," said Stephen Yale-Loehr, a professor at Cornell Law School. "So I see a lot of confusion and efforts to figure out what documentation will be required to show a bona fide relationship."

In terms of examples, the Supreme Court said that for individuals, a "close familial relationship is required." It also pointed to students from the targeted countries who have been accepted to the University of Hawaii, as well as an employee who has accepted a job offer from a U.S. company or "a lecturer invited to address an American audience."

Still, despite this additional elaboration from the court, there are lingering questions about what exactly will count as a close family relationship.

"I think a fourth or fifth cousin is not going to cut it, but I don't think it has to be a spouse or a parent or child," said Ted Ruthizer, co-chair of business immigration at Kramer Levin Naftalis & Frankel LLP. "My guess is that somebody [who] is an adult sibling that's been invited to come to the United States, that would probably do. But this is up for grabs. This is certainly a gray area."

There is likely also to be more guidance coming from the administration, as the U.S. Department of Homeland Security has promised that it will issue "additional details" regarding the implementation after "consultation with the Departments of Justice and State." The U.S. Department of State has also said it will provide more information.

And the agencies may need to hustle. As per a memo released by Trump on June 14, officials have 72 hours to begin implementation. Travelers may also want to brace for some possible confusion at airports, according to Bill Stock of Klasko Immigration Law Partners LLP.

"It's the person who shows up at the airport in the next week or so before the word gets down," Stock said. "And the CBP officer who's reading on Twitter that the Supreme Court says they can do anything they want, may be confused as to the fact that the previously issued visa is still valid."

Attorneys also predicted visa delays and more litigation over the issue.

"It may very well slow down the adjudication process, because I think that it's more likely now than it was even before, that the consular officers are going to want to vet the authenticity of the documents," said Susan Cohen of Mintz Levin Cohn Ferris Glovsky and Popeo PC, who noted that people will likely be providing letters from employers, family members or a school's registrar's office.

On the litigation side, Yale-Loehr also predicted fresh lawsuits as "foreign nationals and refugees argue that they are entitled to enter the United States." And notably, refugees may also feel a significant impact from the order.

"The larger impact may well be on the refugee ban, because very few refugees ever have substantial contact in the United States," Meyer noted.

Finally, one important last point to consider is whether the case will essentially be moot by the time the Supreme Court actually gets to it later this year, thanks to the review deadlines having elapsed.

"If DHS now proceeds, particularly with the 90-day and 120-day reviews that the travel ban is supposed to facilitate, those will be over by the fall, right about when the court is supposed to take this case up," Meyer said. "So, it's quite possible there will be no travel ban by then, at least not this travel ban, because it will have expired."

--Editing by Pamela Wilkinson and Jill Coffey.