

## Summer Delays Likely As State Dept. Ups Visa Screening

By Allissa Wickham

Law360, New York (April 4, 2017, 9:09 PM EDT) -- With the U.S. Department of State issuing cables aimed at increasing visa scrutiny for certain applicants, attorneys say delays are likely, especially this summer, and that employers will need to factor in extra time during the visa application process.

The State Department **recently released** four cables on visa issues, according to publicly leaked copies, and while some sections were halted after **a ruling against** the president's new travel ban, other heightened screening measures remain in effect.

For example, in a cable dated March 17, consular heads were told to assemble working groups to come up with criteria to identify "populations" that deserve more scrutiny. When it comes to such visa applicants, consular officers should think about sending a request for what's known as a security advisory opinion, according to the cable.

SAOs are a tool used for extra agency checks on visa applicants about whom the State Department may have security concerns, according to the U.S. Department of Homeland Security, and they're known to cause delays. Additionally, consular posts were instructed, for the most part, not to schedule more than 120 visa interviews for each consular officer each day.

Overall, immigration attorneys say, the new measures could mean lengthier delays for some visa applicants.

"I think we'll see significant delays over the summer — across the board, but especially for the targeted populations," said Maria Fernanda Gandarez, a shareholder at Ogletree Deakins Nash Smoak & Stewart PC. "I think you're going to see a much higher increase in administrative processing."

That summer uptick could occur as more people apply for visas to come to the U.S. for tourism, according to Chad Blocker of Fragomen, Del Rey, Bernsen & Loewy LLP. And when it comes to getting hit with an SAO — which is included under the umbrella term of "administrative processing" — that can tack on weeks, if not months, to the visa process, he said.

"An SAO is typically at least a couple of weeks delay," Blocker said. "But we've seen some visa applications delayed up to even seven, eight, nine months because of the more extensive checks."

As for where the impact might be felt, attorneys pointed to U.S. consulates in India, which are known for being busy.

"I expect that the U.S. consulates in India are going to be particularly affected because they will [potentially] have a lot of people that fall into this extra screen, and they have a lot of people that want to come here," said Loren Locke of Ford & Harrison LLP, who formerly served as a consular officer in Mexico.

The March 15 cable says that in order to seek an SAO request stemming from the guidance, officers have to ask extra questions, which may include topics such as a person's travel history

during the last 15 years, their addresses during the same time period, old passport numbers, or email addresses and social media usernames used in the previous five years.

And on Tuesday, The Wall Street Journal reported that people who hope to come to the U.S. could be required to “disclose contacts on their mobile phones, social-media passwords and financial records, and to answer probing questions about their ideology,” citing Trump administration officials.

Generally speaking, additional social media screening could also tack on some waiting time, according to Susan Cohen, chair of the immigration practice at Mintz Levin Cohn Ferris Glovsky & Popeo PC.

“Even if the person accedes to the demand and gives the password, they'll spend time looking into the the social media accounts,” Cohen said. “So that by itself will maybe take a little bit longer.”

Some attorneys also anticipate that the new measures could lead to more visa rejections. Jeffrey Gorsky, an attorney with Berry Appleman & Leiden LLP who previously served as the head of legal advisory opinions at the State Department's visa office, said the general tone could lead to an increase in rejection rates.

“Because the cables are written in vague language, the tone of the cable is to err on the side of denials,” Gorsky said.

It's also unclear whether more consular officers will be hired to accommodate for the possible slowdown. According to a State Department spokesperson, consular officers are included in the recent hiring freeze, but an exemption for national security reasons was greenlighted for 80 foreign service officers, and the “large majority of those are assigned to consular duties,” the official said.

“Also, an agency exemption for national security was granted for a class of approximately 20 consular fellows, limited noncareer appointments, which began today, April 3,” the spokesperson added.

What is clear, however, is that companies will likely need to factor in more time for the visa process, according to Gandarez, who noted that employers may need to “plan additional time in applying for their foreign employees to [seek] visas.”

In general, Locke said, this could be a step toward President Donald Trump's goal of “extreme vetting.”

“I think the main impact that everyone's going to feel is that we are shifting from focusing on speed and efficiency, to focusing on more extreme vetting that's going to take longer,” she said. “It's going to take more manpower. It's going to slow down everything.”

--Editing by Mark Lebetkin and Jill Coffey.