President Trump's Executive Orders on Immigration: What is Happening Now?

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The sun has set on President Trump's first "100 days" as the President of the United States. This initial period of Mr. Trump's presidency produced a flurry of actions and executive orders affecting, among other things, the immigration policies of the United States. One such example is the executive order issued on March 6, 2017 which was intended to suspend the issuance of visas and/or entry into the U.S. of individuals from certain countries (the "Order"). Various legal challenges resulted in judicial injunctions halting implementation of the Order, but the United States Supreme Court (the "Court") has breathed new life into at least a portion of the Order.

On June 26, 2017, the Court granted certiorari to the two key appellate court cases that challenged the authority of President Trump to issue and enforce the Order (Trump v. IRAP and Trump v. Hawaii). Consolidated for purposes of appeal to the Court, these cases are scheduled to be heard during the Court's first session of the October 2017 term. In addition to agreeing to hear arguments on the substantive merits of the cases, the Court also lifted, in part, the preliminary injunctions against the Order that were imposed by the lower courts.

The Court left a portion of the injunctions in place, but has cleared the path for the government to refuse visas and/or admission to individuals from the "Designated Countries" identified in the Order (i.e., Iran, Libya, Somalia, Sudan, Syria, and Yemen), if such individuals have no "formal relationship" with any U.S. person or entity. Although the Court did not further elaborate on the necessary level of "formal relationship"

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for purposes of the restrictions, the Trump Administration was quick to provide guidelines to U.S. embassies and consulates. The guidelines, which are scheduled to be effective as of 7:00 p. m. central time on June 29, 2017, define close family ties as a parent, spouse, child, adult son or daughter, son or daughter-in-law, or sibling. Not considered "close" for purposes of the travel suspension would be grandparents, grandchildren, aunts, uncles, nieces, nephews, cousins, fiancés, and other extended family members. From a business / employment perspective, "formal relationships" include some level of "formal, documented" relationship such as employer-employee or a worker under written contract. The guidelines follow the Court's decision in this regard which provides that a formal relationship with an entity in the U.S. must be formed in the "ordinary course" and not for the "purpose of evading [the Order]."

Given the recent issuance of the guidelines, it remains to be seen where this will practically leave U.S.-based family members and other interested entities seeking to secure lawful entry of foreign nationals from the Designated Countries. As noted above, individuals from the Designated Countries with close familial ties that can be documented should still be able to obtain visas and/or admission upon satisfaction of the consular vetting process. Likewise, students and workers from the Designated Countries should also make it through the process as long as there is a traceable relationship with a U.S. entity (e.g., a university or an employer with a pre-approved petition from U.S. Citizenship and Immigration Services). Less clear is how the new guidelines will affect intending visitors from the Designated Countries who cannot clearly establish the requisite level of connection. As such, one can expect that we have not seen the last of the judicial wrangling and legal challenges to these new policies and their implementation. Hopefully, finality will be achieved from the Court this fall.

If you have any questions regarding the Order or the recent guidelines, please contact one of the immigration specialists in Koley Jessen's Employment, Labor and Benefits Practice Group.