

March 2020

Client Advisory

COVID-19: Global Mobility and Immigration Challenges

The past few weeks have seen the emergence of an ever increasing series of border closures and travel restrictions as a means to attempt to stem the spread of COVID-19 (coronavirus). These closures are occurring in North America, Europe and globally. What was for decades an open EU is arguably on a path to return to the former dissected European country model. Here in the United States, with businesses having employees work remotely, employers respecting government mandates to close, and venues going quiet due to “flatten the curve” initiatives, numerous challenges to immigration laws have emerged. While many of these issues remain fluid and subject to change, we are continuing to monitor them and equally stand ready to assist navigating these challenging times for our clients.

State Department Raises Travel Advisory to Level 4

On Thursday, March 19, 2020, the US State Department raised its Travel Advisory to its highest point, Level 4. This level advises US citizens to avoid all international travel due to the global impact of COVID-19. In a similar way, the State Department has urged US citizens currently abroad to actively seek available options to return to the United States immediately unless they are prepared to otherwise remain abroad for an indefinite period of time. In issuing their advisory, the State Department has noted that “Airlines have cancelled many international flights and several cruise operators have suspended operations or cancelled trips. If you choose to travel internationally, your travel plans may be severely disrupted, and you may be forced to remain outside of the United States for an indefinite timeframe.” This directive was issued in part as a response to the US Embassies abroad becoming increasingly less able to assist US citizens abroad as staff continues scale down.

US Embassies Suspending Visa Services

Adding to the challenges, the Bureau of Consular Affairs similarly announced Thursday that the State Department is suspending visa services at its global United States Embassies. While Embassies will continue to process requests for qualified emergencies, this policy change essentially puts the brakes on the ability for a foreign national to obtain a visa to travel to the United States. This policy change includes those foreign nationals with approved visa applications issued out of the United States.

European Union Seals Borders

In a similar move to the United States, the EU member states announced that they were banning travelers from outside for a minimum of 30 days. This initiative is expected to apply to the 26 EU states, as well as Iceland, Norway and Switzerland. This travel ban will affect all non-EU nationals (except those with family members in these EU countries). While free travel to and through the EU has been a long-standing benefit, these efforts foreshadow a reverse to an individual border restrictive EU.

US-Canada Border Closed to Non-Essential Traffic

Even our closest foreign trading partner, Canada, is now restricting non-essential travel. While the closing is mainly intended to slow the flow of cross-border tourists and shoppers, these measures are further indicative of the global efforts to aggressively try to slow the spread of COVID-19.

Unanticipated Immigration Challenges as a Result of COVID-19

As employers move their employees and back offices to remote operations, and related business cancellations and delays continue to increase, new immigration challenges have arisen.

As required by our immigration regulations, when employers hire new employees, one of the benchmarks of compliance is that the employer review in-person certain documents presented by the new employee. With social separation and employers having remote back offices, how can the employer ensure compliance?

On Friday March 20, the Department of Homeland Security announced that it will exercise discretion to defer the physical presence requirements associated with the Form I-9. DHS has noted that due to the impact of COVID-19, documents can be temporarily reviewed remotely, which is currently not authorized by the immigration regulations. Once normal business operations have resumed, the employer should physically inspect the documents as required.

Similarly, with companies having events and projects cancelled resulting in business slow down, employers are required to contemplate employee lay-offs and terminations on an emergent basis. Often times, these employer actions can have significant and immediate impact for the foreign national worker without prior planning.

The above and similar challenges are likely on our horizon for the foreseeable future. To discuss these or similar concerns, please contact one of the attorneys in the Archer Global Mobility team or Robert Seiger at rseiger@archerlaw.com or 215-246-3104.

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