

# COVID-19 – Unprecedented Impact to Nation's Immigration System

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# Agenda

- Quick Update on H-1 Cap Filings
- Various Impacts of Coronavirus
  - Department of State
  - Department of Labor
  - Department of Homeland Security
- Real Life Scenarios



# H-1B Cap Registration

- Platform registrations closed last Friday March 20th
- We await cap selection – no updates yet
- Prior years – selection within 3-4 days of last day of filing
- Promised – by EOB March 31st – today is day 5
- Uncertain if COVID has impacted this
- Although it was painful to use platform, at this point we anticipate USCIS will not pivot from platform – it gives us 90 days to file





# Impact of Coronavirus on Immigration System

- Important to understand a couple of ground rules
- Immigration system is reliant on normal commercial rules
  - planes flying, countries keeping borders open, trade unrestricted
- We don't control government actions – throughout changes have happened quicker than we can report
- For this reason we have cautioned on travel for nearly last 2 months – 1st EO Jan 31st related to China (have had five extra alerts since)



# Impact of Coronavirus on Immigration System (Cont.)

- Travel could result in quarantine, shelter in place, inability to fly, significant economic consequences for individual or company – [travel.state.gov](https://travel.state.gov)
- Dates are fluid/don't trust them – chance of extension renders them meaningless
- I'll stick to the business implications – reminder US often sets the tone



# Department of State

- Officially all U.S. consulates currently closed for routine visa and immigrant visa processing
- Hearing of some urgent matters being considered - and some countries are easing restrictions (Singapore)
- No date set for resumption of normal schedule
- Some consulates are allowing future visa appointments in May (Europe), others not showing appts (monitor consular websites)
- J-1 programs on 60 day pause



# Department of State (Cont.)

- What we can do – prep cases in advance of consular reopening/file E-2s and continue processing
- Client takeaway – do not leave US if you need visa (no guarantee on when you can return)
- Real issue – individuals who travelled and are awaiting visa to return are stuck pending visa [hail mary – entry without visa]
- Hope – this will push Dept of State in direction of video based consular interviews





# Department of Labor Updates

- PERMs through June will be issued electronically (will speed up filing option by a week), and recruitment period extended for certain PERMs
- LCA posting requirements remain - pivot to electronic LCAs where possible
- Internal posting requirements remain - not replaced by electronic means [wait for resumption of business vs. post now]
- Reminder - prevailing wages will be limited to 90 days now - so timeliness of recruitment is key
- Generally prevailing wage determination is very slow
- I-9 - original document requirements suspended, eVerify - can delay on tentative nonconfirmations





# Department of Homeland Security

- Restriction on processing at ports of entry (US/Cda border – no visitors – L/TNs still allowed at port of entry); China; Europe (incl UK/Ireland); Mexico
- USCIS suspends Premium Processing – no advance warning
- Anticipate loosening of response times (already advised on one case)
- Wet signatures no longer required on petitions (at filing)
- Local offices closed, appts cancelled and pending rescheduling (includes trusted traveler programs) – limits inquiry options and chance to fix simple gov't errors



# Big Picture - What is the Impact

- There is equal parts business and government in all of this
- Examples - school closes and sends students home - USCIS doesn't change rules - F-1s can't remain "in status" in virtual program - this may impact F-1 EAD opportunity [our advice - apply for EAD before departing]
- Company cuts wages or goes through furlough - prevailing wage obligations remain [options depend on how LCA drafted; how long furlough is or whether paid leave]
- Shelter-in-place triggers work from home - new DOL guidance [our advice - post from home; if outside of commute, use 30/60 day rule - have window to comply]



# Big Picture – What is the Impact (Cont.)

- New cases – L-1 Blanket [we can draft – waiting for Consulate], or J-1, wtg for DOS to lift suspension [we can draft]
- Existing cases – L-1B – file extension to maintain status, but pivot to consulate
- H-4 and H-4 EAD – waiting on fingerprint for I-539 [advice – once reopened, attempt showing up without appointment to speed decision] – EAD ultimately delayed
- We expect use of 240 day rule – timely filed extensions afforded 240 days





# Way Forward

- Each company will manage their issues differently – depends on global reach as to what options you have
- Reduce travel, limit contact, create social distance
- If person stuck or has emergent travel – contact us
- If RIF planned – contact us
- If wage reduction planned – contact us
- If work from home happening – contact us
- If new hire not in US – contact us





# Way Forward (Cont.)

- What we are managing – people who are in process or stuck right now
  - Planning for extensions and change of status applications – determining best approach – seeking to file asap
  - Ensuring PERMs are filed timely [limit apps avoid RIFs]
  - Ensuring we get needed extensions of time
  - Navigating uncertainty to figure out best option but always having a back-up



# Final Thoughts

- Our goal – to get everyone we can through this time of disruption unscathed, and clean up issues as soon as government “re-opens”
- This will return to normal – I give it six months of additional disruption before system returns to normal hours of operation
- Still may be pockets of issues in the globe
- Then give it 12 months for system to catch up
- There will be ongoing delays for appointments (USCIS and DOS) and case processing
- Each case has become more unique requiring more involvement/skill





# Questions?

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