

Trump's Immigration Road Map Has Attys Scrambling

By **Nicole Narea**

Law360, New York (January 26, 2018, 9:33 PM EST) -- Immigration attorneys say that individual and corporate clients alike are panicked by President Donald Trump's legislative framework for an immigration compromise released Thursday, in particular its pledge to slash legal family-reunifying immigration.

Attorneys are advising their individual clients to immediately sponsor their extended family for visas or obtain legal status themselves while they still can. And American companies are seeking legal counsel on how to best respond to the uncertain political climate in their hiring decisions and as their current employees stand to lose their employment authorization.

The White House has proposed, among other provisions, barring visa sponsorship for extended family and a pathway to citizenship for some 1.8 million youth who are eligible for Deferred Action for Childhood Arrivals, which provides deportation protection and employment certification to immigrants who came to the U.S. as children.

"I am advising clients that nothing is certain," Elizabeth Garvish of Garvish Immigration Law Group LLC told Law360. "We are still getting things through, but the struggle is real and clients need to be prepared for a fight in some cases."

The plan would allow DACA-eligible youth to obtain citizenship after 10 to 12 years with certain requirements, fund a \$25 billion border wall system and hire new immigration workers, such as immigration judges, law enforcement officials and attorneys. It would also eliminate a visa lottery program and restrict family immigration by barring visa sponsorship for extended family members.

The plan also notably proposes to reallocate visas to reduce the family-reunification and high-skilled employment backlog in order to further what Trump has repeatedly referred to as a "merit-based immigration system." It further proffers the prioritization of criminal immigrants for removal and the removal of illegal border crossers, in part as a means of deterring visa overstays.

Immigration attorneys said that, while the plan suggests some much-needed reforms, its promise to slash family reunification by precluding U.S. citizens from sponsoring their extended family for visas would be particularly devastating to their clients.

Matthew R. Glinsmann, a shareholder at Maryland-based Glinsmann Immigration, told Law360 that his

firm had anticipated that sibling sponsorship might be cut and that the waiting period for those visas stands at about 13 years, a time frame that had already “pushed it out of the realm of reason.” But eliminating the sponsorship of parents poses the “biggest harm to families,” he said.

“We have lots of very stressed-out clients seeking any possible relief,” Glinsmann said.

Ellen Freeman, an immigration attorney at Porter Wright Morris & Arthur LLP, said that a number of her clients are worried that they will not be able to bring their ailing parents to the U.S. to care for them. Although those people might have previously waited years to begin the process of sponsoring their parents, she said they are now asking, “Can you start today?”

The global firm Mayer Brown LLP has also taken on individual pro bono cases on behalf of employees of their corporate clients, including some who have ailing parents they want to sponsor to come to the U.S., said Mayer Brown partner Elizabeth Espin Stern, who leads the firm’s global mobility and migration practice.

Companies, meanwhile, are scrambling to support employees who might be affected by Thursday’s plan, among other policies implemented by the Trump administration, attorneys said.

Freeman said her corporate clients are “really concerned about the mental well-being of their employees” as some of them watch Congress carry out a high-stakes negotiation over their futures.

And Stern said that after Trump unveiled his framework, she advised her Fortune 100 company clients on how to embrace their employees and stem panic while also meeting their legal obligations and refraining from making false promises. That begins with creating a unified front in communicating with the “highly educated, vibrant, contributing” employees who might be affected, she said.

“A lot of our work has involved a C-level swat team that now includes human resources, legal, public relations and security and figuring out how to reach out to people without offending the group that is being affected,” she said.

Moreover, Stern has advised clients to avoid taking job applicants’ immigration status into consideration when making hiring decisions. Though some employers might be tempted to reject an applicant who has time-limited work certification given the uncertainty surrounding immigration policy, the Immigration and Nationality Act precludes them from doing so, she said.

Employers are not, however, required to sponsor individuals for visas — a process that can be cost- and time-ineffective given current growing backlogs. Trump suggested in his Thursday plan to ease those backlogs by reallocating visas to high-skill employment and family reunification visa categories, but attorneys said it was an ineffectual fix.

The visa lottery program that Trump proposed cutting would free up some 50,000 visas, “a drop in the bucket” of the visa backlog, Freeman said. Furthermore, Glinsmann said the employment-based category of visas specifically does not have a significant backlog and the total number of visas the U.S. gives out yearly can’t keep up with global demand anyway.

“The whole concept of visa numbers and where they go needs more study and shouldn’t be a knee-jerk reaction to this DACA deal,” he said, referring to recent political turmoil around the program.

But what is perhaps most harmful about the White House's proposal is not any one of its particular provisions but the message it sends to immigration authorities enforcing policies on the ground, said Hector A. Chichoni, the chair of Duane Morris LLP's immigration practice in Florida.

The Trump presidency has enabled adjudicating officers to stonewall or delay visa applications by universally requiring applicants to complete interviews and "exceeding the requirements of the law" in demanding unreasonable burdens of proof from the applicants, he said.

"Under this extreme conservative political agenda, enforcers of immigration laws go beyond the mark," he said. "Our advice to our clients is, be careful. This is no longer the same game."

--Editing by Brian Baresch and Breda Lund.