

## Under Travel Ban 3.0 Attys Say To Stay Home

By **Nicole Narea**

*Law360 (March 20, 2018, 9:04 PM EDT)* -- The Trump administration has not offered clear guidance on how to obtain a waiver from the third iteration of its travel ban and gain entry to the U.S., leaving most attorneys saying immigrants from the affected countries who are already in the U.S. should avoid international travel altogether.

The so-called Travel Ban 3.0, enacted via executive order in September, places travel restrictions on foreigners from eight countries: Chad, Iran, Libya, North Korea, Syria, Venezuela, Somalia and Yemen. The U.S. Supreme Court agreed in January to review the legality of the ban, but has allowed it to go into full effect while the justices deliberate.

The ban permits affected individuals to obtain a waiver to enter the U.S. if an immigration official determines that it is "in the national interest," if "denying entry would cause undue hardship" and if entry does "not pose a threat to the national security or public safety of the United States."

But that criteria has proved nearly impossible to meet. Over 8,400 individuals affected by the ban applied for nonimmigrant and immigrant visas between Dec. 8 and Jan. 8, and only two waivers were approved as of Feb. 15, according to State Department data.

Sens. Chris Van Hollen, D-Md., and Jeff Flake, R-Ariz., wrote a letter to the State Department in January inquiring about the "near uniform denials of waivers" and requesting more transparency into how the agency determines waiver eligibility. The agency responded last month, saying that immigration officials have not been offered guidance beyond the text of the ban itself.

With little insight into what the administration expects of waiver applicants, attorneys are in the dark, urging their clients from affected countries to avoid travel risks. And for clients who have no choice but to travel, the process of obtaining a waiver has been long and largely fruitless, they said.

"We are very concerned about the approvability of waivers and strongly advise clients who might need a waiver not to travel," said Andrew Greenfield, a partner at Fragomen, Del Rey, Bernsen & Loewy LLP.

### **Travel Only If You Must**

Corporate immigration lawyers have largely instructed their clients' affected employees to refrain from traveling while the ban is in effect.

Greenfield said that travel is feasible for individuals who are exempt from the ban because they were already in the U.S. when the ban took effect, were abroad at that time with a valid visa, or had green cards or other exempt status. But citizens of one of the banned countries should at least brace for delays at consulates and at the border, given that national security screening remains strict even where the ban does not technically apply, he said.

He also noted that an exception for those with a “bona fide relationship” to a U.S. citizen or employer is no longer in effect. The high court had issued a ruling creating the exception last year, but eliminated it in its January ruling.

"Advise your clients conservatively," he said. "If your client will need a waiver, advise against travel except in most the extenuating or compelling circumstance. Warn all employees, and the business, of the risk of delay when traveling abroad, especially if the employee is from one of the banned countries, if they will require a new visa while abroad."

Elizabeth Espin Stern, a partner at Mayer Brown LLP, said that all her affected clients, and even some who are not directly affected, have elected not to travel. Clients who are not from a country encompassed by the travel ban fear that the administration might target their country next, and with no advance waiver option, they think they could be stranded abroad, she said.

"We've done a great deal of counseling to assist such individuals in stemming anxiety, communicating with them, their families and the ports, and they have still elected to forgo travel," she said.

### **Don't Bet on Obtaining a Waiver**

Franco Capriotti, who has his own immigration practice Capriotti International Law in Minnesota, has found no success in obtaining waivers for his clients so far.

One of his clients, a 17-year-old girl whose mother recently became a U.S. citizen, remains in Iran living with her grandparents while she awaits the processing of her visa application and request for a waiver. She sat for a visa interview at the U.S. Consulate in Abu Dhabi, United Arab Emirates, in late January, telling the officer that she urgently needed to travel to the U.S. before her grandparents organized her arranged marriage against her will.

The consulate refused to expedite her application, however, saying that she would be offered no special treatment. Capriotti said that the officials who process such cases have shown “no sensitivity” to her situation, even after he involved a U.S. senator’s office, which only learned that her administrative processing is still pending.

“We were told that her application would go into administrative processing — or as we call it, the black hole,” he said. “The papers have disappeared in DC.”

Mahsa Khanbabai, an attorney for Khanbabai Immigration Law, said that she has observed outright denials with no request or opportunity to submit waiver documentation, citing the ban itself as the reason for the denial, as well as denial denoting that a waiver of the travel ban is under consideration.

She has also found that consulates have not processed waivers uniformly. Some consulates refuse to accept waiver documentation and request an oral explanation of why the applicants believe they

qualify, while others will take waiver documents, but only if the applicants insist.

“We are still trying to determine how this is being carried out,” she wrote in a practice advisory.

--Additional reporting by Kevin Penton. Editing by Jill Coffey.

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