

Immigration Attys Ride Out Limited Service In Shutdown Slog

By **Nicole Narea**

Law360 (January 18, 2019, 10:22 PM EST) -- Business immigration attorneys said they have mostly been able to conduct business as usual in spite of the federal government shutdown, though certain key programs remain inactive and low agency staffing levels have slowed down services.

U.S. Citizenship and Immigration Services, which handles immigration benefits, has remained open, though some attorneys have reported processing delays. Some attorneys are also concerned that the U.S. Department of State will have to shutter consulates and embassies abroad as they run out of funding for critical functions.

Attorneys representing non-detained individuals in removal proceedings, meanwhile, face complications due to the closure of immigration courts, with many missing long-awaited hearing dates and left wondering whether their filings are being processed. The attorneys said they anticipate the courts will offer clarity to those affected by the shutdown once they reopen, but until then, they are aiming to meet deadlines and prepare for hearings as usual.

“Generally speaking, the shutdown has impacted everyone that interfaces with the U.S. government,” Laura Reiff, co-chair of Greenberg Traurig LLP’s immigration practice group, said. “Policy changes and regulations have been halted or severely slowed down. [The U.S. Department of Homeland Security and USCIS] need to operate at full staff to handle their critical caseload.”

Affected Immigration Agencies

While most administrative agencies relating to immigration remain open, some offices have been furloughed.

USCIS relies on user fees and has therefore generally operated as normal under the shutdown, though its Office of the Ombudsman, which provides helps to resolve issues with agency cases, is not providing services. Hector Chichoni, chair of Duane Morris LLP’s immigration practice in Florida, said that USCIS has instructed his clients to attend interviews and appointments as scheduled. He noted that the agency has also announced that it will continue to accept petitions and applications for benefit requests, with only a few exceptions.

The U.S. Department of Labor, which cooperates with USCIS on certain visa adjudications, has been funded through the end of fiscal year 2019 and is also unaffected. The DOL has to process documents

relating to labor conditions and prevailing industry wage determinations for employment-based immigration petitions, for which Chichoni said he has experienced no delays.

The State Department has so far continued to issue visas, as that function is funded by fees, but that “may end if the resources become unavailable to conduct [any] other than security-critical operations at embassies and consulates abroad,” Paul Virtue, a partner at Mayer Brown LLP, said.

So far, Chichoni said that at the U.S. consulate in Frankfurt, Germany, certain appointments relating to E treaty trader visas are on hold due to the shutdown. His firm has also noticed delays for E-2 investor visa interviews of two to three weeks beyond the regular waiting period in several U.S. consulates, including Buenos Aires, Argentina, he said.

U.S. Customs and Border Protection’s Admissibility Review Office has also been furloughed, meaning that certain applications for waivers of inadmissibility to the U.S. are not being processed.

Programs Suspended

Authorization for certain immigration-related programs has expired in the wake of the shutdown. Among them are E-Verify, through which the Department of Homeland Security checks the employment eligibility of U.S. workers; the EB-5 investor visa regional center pilot program, which provides applicants with a path to a green card if they use government-authorized investment vehicles; the Conrad-30 physician waiver program, which offers immigration benefits to foreign physicians working in underserved areas of the U.S.; and the Religious Worker Immigrant Program, which allows non-minister immigrants in religious occupations to seek permanent residence.

The programs were supposed to be extended by a continuing resolution on Dec. 21 through Feb. 8. But that resolution was not passed, meaning that the programs are no longer in force. In the meantime, DHS has released guidance for those affected.

Chichoni said his firm is currently assisting clients registered with E-Verify to monitor the availability of service.

Reif said that, with respect to EB-5, most immigration attorneys are proceeding as if the program were still operable, putting together filings for new projects and investor petitions. But USCIS cannot adjudicate the petitions while the program is not authorized.

EB-5 projects and representatives of investors have also been reluctant to move forward with investments until the government is reopened, she said.

“The EB-5 program must be extended for a longer term despite the current suspension,” she said. “The program is severely hampered by speculation about its continued viability unless and until a long-term — 4-6 years minimally — extension and reform of the program is passed by Congress.”

Uncertainty in the Immigration Courts

Immigration attorneys also expressed frustration with the shuttering of immigration courts.

Patrick Taurel, a senior attorney at Clark Hill PLC, said that one of his clients was scheduled to appear in Virginia immigration court last week for an anticipated ruling on a motion to terminate proceedings that

was filed months ago. The client's case has been pending for almost nine years, with two appeals to the Board of Immigration Appeals.

"Needless to say, he was sorely disappointed by the cancellation of his hearing and is eager for his case to be rescheduled so that he can resolve this matter and move on with his life," he said.

Ruby Powers, a Houston, Texas-based immigration attorney, said that, as of Jan. 7, hearings in four of her cases had been delayed, with no information as to when they will be recalendared. Moreover, she said she is hesitant to file motions before the immigration court while it is closed because she does not know whether they will be processed by the necessary deadlines.

Evangeline M. Chan, director of the Immigration Law Project at the New York-based victim services nonprofit Safe Horizon, said that for her clients, who are mostly low-income survivors of abuse and violent crime, the uncertainty surrounding their court dates poses logistical difficulties. She said it is not easy for them to take off time from work and find alternative childcare to prepare documents associated with their case and for their hearings.

"They've been waiting years for their day in court and now they don't know when that may be," she said. "It's very disruptive to our clients' lives."

--Editing by Pamela Wilkinson and Kelly Duncan.