

Visa Hopefuls, Businesses Aim To Block Trump's Entry Bans

By **Suzanne Monyak**

Law360 (July 17, 2020, 8:39 PM EDT) -- More than a hundred visa hopefuls, their relatives and employers have lodged a pair of D.C. federal court challenges to President Donald Trump's proclamations curbing immigration into the U.S., claiming the president overstepped his authority in disregard of federal immigration laws.

Attorneys with the American Immigration Lawyers Association, Mayer Brown LLP and other organizations updated their lawsuit in D.C. federal court Friday to challenge both of the president's visa bans, which target both family-based green cards and temporary work visas — the first case to challenge all of the president's restrictions.

The Friday lawsuit, brought by two dozen individuals and organizations that hire foreign workers, argues that Trump's visa restrictions — issued in April and expanded in June to protect U.S. jobs during the coronavirus pandemic — are "irrational" and will actually undermine the U.S. economy.

"The ban affects foreign-born workers, innovators, entrepreneurs, and consumers upon whom the economy relies on for stability and continued growth, and hamstring U.S. companies around the country from effectively managing their labor needs," the complaint said.

The bans have also separated families by barring visa-holding relatives caught abroad when the U.S. closed its borders in March from returning through the end of the year and suspending new green cards for relatives, including spouses, of U.S. permanent residents — "an intolerable human cost," the suit argues.

One plaintiff, Nazif Alam, a green card holder who was in the final steps of sponsoring his wife to live in the U.S. with him when the coronavirus outbreak hit, said on a press call that the proclamation has "upended our whole world and shattered our American dream."

His wife, who lives in Bangladesh, has been accepted for a graduate program at Cornell University in the fall and may now be unable to enter the U.S., while he has worked through the pandemic in the food distribution industry in New York keeping stores stocked.

"Our fight may look like another mere lawsuit, but for us, this is a fight for our most basic God given right: the right to be with our families," he said.

The day before AILA's lawsuit, a trio of law firms filed a separate lawsuit challenging the green card ban on behalf of nearly 150 diversity visa candidates and their relatives who were selected in the competitive lottery, which allocates 55,000 visas annually to foreign citizens from countries that are underrepresented in the U.S.

Diversity visas were not excluded from Trump's green card ban, leaving those individuals not yet in the U.S. "racing against the clock" to get their visas by the end of September, or else lose their spots, that complaint says.

"For diversity visa recipients, the harm caused by Trump's proclamations is immediate and particularly severe," the lawsuit, filed in D.C. federal court Thursday night, said. "Diversity visa recipients will, absolutely and irrevocably, lose their ability to immigrate to the United States, and specific and very difficult hardships on families and employers will result."

Section 212(f) of the Immigration and Nationality Act, which gives the executive branch the authority to block the entry of foreigners into the U.S., "does not give him the power to arbitrarily and permanently change people's lives for the worse just to advance his political agenda," Greg Siskind of Siskind Susser PC, one of the attorneys behind the Thursday suit, said in a statement.

Both lawsuits claim that the visa suspensions are arbitrary in violation of administration law and in conflict with the U.S. Constitution's due process clause.

The Thursday suit is the second advocating for diversity lottery winners caught up in the ban. Earlier this month, nearly 500 diversity lottery winners and their families sued the administration over the visa restrictions, accusing the president of using the coronavirus as an excuse to cut back on immigration.

Nearly 200 Indian citizens have also challenged the suspension of H-1B specialty occupation visas, claiming in a Wednesday lawsuit that the ban has kept their families apart and caused some to lose income or remain trapped abroad despite owning property in the U.S.

The mounting litigation is in response to Trump's sweeping proclamations barring foreign citizens abroad from moving to the U.S. on new green cards, including adult children and parents of American citizens and relatives of U.S. permanent residents.

The restrictions also barred American companies from bringing on foreign workers on employment-based green cards, with some exceptions for health care workers.

In June, Trump extended that ban until the end of 2020, and imposed new restrictions blocking foreign citizens from moving to the U.S. on new work visas, including H-1B visas and L visas for internal company transfers, as well as those visa holders' spouses and kids.

The White House has said that the entry of foreigners under these visa programs "presents a significant threat to employment opportunities for Americans affected by the extraordinary economic disruptions caused by the COVID-19 outbreak."

However, immigration attorneys have told Law360 that employers are not eager to rescind offers to foreign candidates who were specifically recruited for specialized rules, particularly when many of the industries that hire foreign workers, like technology, have transitioned to working remotely.

"The president is willing to tear these families apart to further his xenophobic agenda and shut down all immigration to the United States," said Nadia Dahab, a senior staff attorney with Innovation Law Lab, one of the attorneys in AILA's suit. "It simply does not serve the purposes that the administration suggests and in fact will only endanger the U.S. economy"

But critics of the ban have so far been unsuccessful in their attempts to challenge it. Two attempts to challenge the initial green card ban have failed in the courts, including an earlier version of AILA's updated lawsuit after a federal judge found that the impacted individuals had not been sufficiently harmed yet to bring claims.

A spokesperson for the U.S. Department of Justice did not return requests for comment Friday on the two lawsuits.

The diversity visa lottery winners in the Thursday lawsuit are represented by Charles H. Kuck, Phillip C. Kuck and Danielle M. Claffey of Kuck Baxter Immigration LLC, Greg Siskind of Siskind Susser PC and Jeff D. Joseph of Joseph & Hall P.C.

The individuals and organizations in the Friday lawsuit are represented by Andrew J. Pincus, Matthew D. Ingber and Cleland B. Welton II of Mayer Brown LLP, Jesse M. Bless of AILA, Karen C. Tumlin and Esther H. Sung of the Justice Action Center and Stephen Manning, Nadia Dahab and Tess Hellgren of the Innovation Law Lab.

The cases are Aker et al. v. Trump et al., case number 1:20-cv-01926, and Gomez et al. v. Trump et al., case number 1:20-cv-01419, in the U.S. District Court for the District of Columbia.

--Editing by Abbie Sarfo.