

Immigration Delays and How Manufacturers Can Manage Them

By

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For employers that hire foreign nationals, whether as local hires already in the country or as transferees from foreign affiliates, immigration processing delays have been exacerbated during the COVID-19 pandemic. Companies in the manufacturing sector have had to deal with unexpected unpredictability in project planning, as well as increased costs.

The cost can be profound for manufacturers because development and production within a manufacturing facility cannot easily be shifted abroad or handled remotely. When multiple products are tested, validated, manufactured, and, ultimately, launched in the U.S. market, manufacturing goals often are subject to stringent deadlines and contractual obligations.

While some delays are inevitable, it is nonetheless important to approach them strategically with the goal of minimizing the impact on business operations.

Delays Inside and Outside the United States

U.S. consulates in almost all locations worldwide continue to experience closures and staffing shortages that result in work visa issuance delays. Without work visas, foreign workers who have been identified to start U.S. assignments could not timely assume their duties, leading to costly project delays. Moreover, the additional and lingering effect of the pandemic on business and personal travel can continue to make the United States a less attractive destination for specialized foreign professionals that employers wish to hire.

U.S. Citizenship and Immigration Services (USCIS) and Department of Labor (DOL) processing delays have created a gap in employment for foreign nationals already residing in the United States, leading to ongoing project interruptions, increased document processing costs for sponsoring employers, and, ultimately, loss of U.S. work status for valuable employees. Coupled with the low unemployment rate and overall labor shortages, this is the perfect storm for employers of foreign nationals.

However, with extra planning and foresight, employers can somewhat minimize the negative impact of processing delays on their business operations. Manufacturers already used to working with long product cycles need to incorporate immigration considerations into their overall business planning strategy to ensure production readiness.

Planning is Key

In the case of persistent consular delays, employers can identify foreign experts for projects early. At least in the foreseeable future, it might no longer be possible to routinely bring talent to the United States quickly. Nonetheless, most U.S. consulates are cognizant that there are situations that require faster and even emergency processing.

The U.S. company that needs to bring in a foreign worker earlier than the earliest available consular interview needs to be prepared to explain:

- The essential nature of the work to be done by this employee for the company in the

United States;

- Why is there no one in the United States who can do this work;
- What kind of hardship the company will incur if the employee cannot physically perform their job in the United States (such as specific financial losses, violation of contractual obligations, stopping operations on some projects, and even potential layoff of U.S. workers); and
- Why this essential work cannot be done remotely.

Consulates have been, and continue to be, open to assisting employers with facilitating the movement of international personnel to the United States if the business necessity reasons are compelling.

Long-Term Relief on the Horizon

In the case of DOL and USCIS delays, the options are not as clear. Unlike U.S. consulates, which are part of the U.S. Department of State, the USCIS, as part of the Department of Homeland Security, tends to be less responsive to requests to expedite processing. This stems partially from the understanding that the individuals requesting this service are already in the United States and, presumably, have more options. Additionally, USCIS made Premium Processing (expedited case processing upon payment of additional fees) available to certain petition types for the first time in 2022, including for immigrant petitions for multinational managers and executives and for national interest waivers. USCIS also announced that Premium Processing for employment authorization applications and advance parole and temporary travel documents will become available sometime in 2023.

Once fully implemented, these initiatives will go a long way toward ensuring that employment is not interrupted. Until then, employers of foreign nationals in the United States need to continue to look at the big picture when considering sponsorship opportunities and timing. Eligibility for employment-based permanent residence sponsorship should be considered early to accommodate potential lags in the process. In general, it is a good idea to review immigration sponsorship policy regularly (preferably, annually). Since timing is such a critical component of an immigration case, a rigid and inflexible policy that does not reflect the current environment might not serve the employee population and might make the company less attractive to potential employees in a competitive market.

Manufacturers needing assistance with their foreign national hiring plans and sponsorship policy should work with an experienced immigration attorney. Contact a Jackson Lewis attorney if you have any questions about how to create a comprehensive and flexible policy, as well as how to address and minimize the effect of immigration delays.

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