

Immigration and Humanitarian Concerns

By Sarah P. Caze & Marissa A. Prianti

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Transcript

INTRO

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CONTENT

Sarah P. Caze

Associate, White Plains

Well, good afternoon, everyone.

Marissa A. Prianti

Associate, White Plains

Good afternoon.

Caze

Thank you for joining us today. We are going to be discussing what employers can expect with regard to employees who have pending Asylum applications, Temporary Protected Status, who may have immigration benefits through Humanitarian Parole programs and DACA during the upcoming Trump administration.

Prianti

This is really based on what we've experienced with the past administration and based on promises made during the campaign trail. It's nothing that we know will happen with a 100% guarantee, but things that we can reasonably expect.

Caze

Definitely. I'll start off with Asylum and TPS. Many employees have pending Asylum applications, and as a result of their pending Asylum applications, they have Work Authorization Cards. While we don't expect Asylum to be revoked or rescinded under the Trump administration, we do expect that it will become more difficult to get Asylum applications granted. We expect that wait times for interviews will become longer and that there may be some changes to the way Work Authorization documents are processed and granted in relation to Asylum applications.

With regard to Temporary Protected Status, by way of a very brief background, certain countries have been designated for Temporary Protected Status, meaning citizens of that country can live and work in the United States pursuant to these designations as a result of a catastrophe that occurred in that country. A major example is Haiti, the earthquake that occurred in 2010. More recently, the war in Ukraine and the current economic crisis in Venezuela. All three of those countries are designated for TPS. Individuals who have Temporary Protected Status obtained Work Authorization on the basis of their Temporary Protected Status.

During the last Trump administration, he tried to rescind Temporary Protected Status. There were extensive court challenges to these efforts. As a result, Temporary Protected Status survived the last Trump administration. We expect that there will be similar efforts to rescind the programs during this administration. It's extremely important that employers look at how many of their employees are working pursuant to Temporary Protected Status and speak with immigration counsel to explore other options for these employees.

Prianti

Yes, when it comes to Humanitarian Parole by way of background, it's a special permission that is granted to individuals to either enter the United States or to remain in the United States. It's typically granted for between one to two years or more. Individuals under these programs are typically granted Work Authorization as well. We expect many of the reset programs, the Operation Allies Welcome for Afghans, Uniting for Ukrainians and the special process for Cubans, Haitians, Nicaraguans, and Venezuelans. We expect that a lot of employees hold these under these programs currently.

If these programs were to end under the Trump administration, we'd expect to see USCIS stopping the issuance of special Travel Authorization for individuals who are outside of the United States and have these applications pending.

For those within the U.S., depending on the employee's nationality, the outcome might be different. Under all these categories, the individuals might potentially be eligible for Asylum. When it comes to Afghan nationals, they have special pathways to obtain a green card. Ukrainians can fall back on CPS if they're eligible, not all Ukrainian parolees would be eligible. It depends on when they entered the country. The same goes for Haitians and Venezuelans, depending on TPS. They could potentially rely on that depending on when they entered the country. Nicaraguans don't really have other pathways at the moment other than Asylum or potential family-based applications. It's also important for employers to identify which

employees will be potentially affected because they might have to let go of these employees if they lose parole and Work Authorization based on that parole.

Caze

Absolutely. Just to clarify, anyone who is in the United States can apply for Asylum at any time. However, there are risks and benefits associated with applying for Asylum after you've been here for a certain length of time. Very important for these employees to consult with immigration counsel before deciding to apply for Asylum if they have not already done so.

Pivoting a little bit to DACA or Deferred Action for Childhood Arrivals. This is another program that is available to individuals who were brought to the United States as children by their parents before a certain date. These individuals are able to obtain Work Authorization based on their DACA status.

During the last Trump administration, there were efforts to rescind and revoke DACA. There were court challenges similar to Temporary Protected Status. DACA is still around. We don't know what will happen under the incoming administration. It's very important to evaluate how many employees you have who have DACA status and to look into other potential options for these employees.

Prianti

Just another quick note on humanitarian programs, the one for Cubans, Haitians, Nicaraguans, and Venezuelans. The Biden administration has already indicated that these individuals will not be eligible for re-parole. This is something that we're expecting will end whether or not the Trump administration takes action on it. Individuals can still apply and be eligible to come to the U.S. under this administration until further notice, but they are expecting to only be able to remain here based on their initial two-year parole.

Another thing that we had experienced during the past Trump administration was travel bans, almost immediately after he took office. We're expecting that some of those might make a comeback. Perhaps the same countries with countries added, who knows, but employers should be aware of those bans. They should perhaps monitor their employees' travels, particularly business travels so that they're not stuck abroad and unable to return to the U.S.

Another thing to keep in mind is that there might be more raids and more site visits. We want employers to start preparing for those by doing internal audits or contacting immigration attorneys to help them with those audits and make sure that all their employees' records are checked.

Caze

Just to piggyback off of what Sarah said, if you have employees who potentially need to travel abroad before January 20th or will not return until after January 20th, it is very important to consult with immigration counsel to make sure that they don't run the risk of becoming stuck outside the country. Similarly, if you have employees who are currently outside the country, you want to speak with immigration counsel to make sure that they're going to be able to get back in post-January 20th if they're not

scheduled to return until after that date.

With regard to potential worksite enforcement and I-9 audits, now is definitely the time to get your I-9 paperwork in order. Contact immigration counsel. You want to correct as many possible errors as possible before there are stepped-up enforcement and worksite visits. A lot of employers have innocent mistakes on their I-9s, or employees have expired Work Authorization, and they don't even realize it. These are things immigration counsel can help with and protect employers from liability before the enforcement starts.

Prianti

That's all we have for today. Stay tuned for more updates from us. If anything comes up, feel free to reach out to us or any other immigration attorneys from the Jackson Lewis team.

Caze

Absolutely. We'd love to help.

OUTRO

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