



LAW & GOVERNMENT

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Law firms field post-election immigration questions

Advising clients when the future is uncertain

By ADINA GENN

Ever since the election, law firms that focus on immigration – whether assisting individuals, or businesses employing foreign nationals – are spending a lot of time fielding questions from concerned clients.

With the Trump administration's position on immigration unclear, attorneys say they've seen a spike in inquiries as clients seek to navigate what comes next.

"There is angst and uncertainty," said Caroline Westover, who handles labor, employment and immigration matters as a member of Bond Schoeneck & King, a law firm with offices in Garden City.

"The calls since early November have increased," she added. "There is more of a concern or panic tone by clients."

Some attorneys field questions about the future of regulations regarding the U.S. Citizenship and Immigration Services, which issues 65,000 H-1B visas every year to foreign workers, with another 20,000 for those with master's degrees or higher.

Others address questions about what's ahead for undocumented residents. About one in four U.S. immigrants is unauthorized, according to the Pew Research Center, which reports that unauthorized immigration in New York State totaled 775,000 individuals in 2014.

But with the president-elect's immigration policy unclear, no one is certain what to expect when it comes to work visas, green cards and any new required documentation and workplace enforcement protocols. Uncertainty also looms over Deferred Action for Childhood Arrivals (DACA), which allowed immigrants who entered the United States illegally as children to apply for work permits, and offered temporary protection from deportation. And there are questions about the future of Deferred Action for Parents of Americans (DAPA), a program, recently blocked by a federal court in Texas, that protected parents whose children are U.S. citizens.

But experts recommend a proactive stance, so companies and individuals can prepare in the face of an uncertain future, keeping in mind that some of Donald Trump's campaign rhetoric might prove time-consuming and costly to enact, while other proposals could require less effort to implement.

"You don't know what's going to change," said Erin O'Brien, an attorney with Uniondale-based Stella Justice Center and the chair of the Nassau County



Photo by Judy Walker

ERIN O'BRIEN: Experts don't yet know which immigration policies are going to change under the Trump administration.

Bar Association Immigration Committee.

Yet you can watch for cues.

"Increasing the number of agents that work for ICE [U.S. Immigration and Customs Enforcement] is very easy to do," said Carmelo Grimaldi, a partner at Mineola-based law firm Meltzer, Lippe, Goldstein & Breitstone, who specializes in labor and employment.

On his website, Trump's vision currently includes tripling the number of ICE agents, which could prompt a surge in compliance audits, including review of I-9 forms.

Grimaldi recommends companies have labor and employment attorneys audit these forms now.

"If he increases that number of federal workers, there is a much greater chance of being subjected to audit than you were in the past," Grimaldi said. And even companies that can show "they didn't knowingly hire anyone [unauthorized to work in the United States], by the time you're done with an audit you may have a list of people who are not here lawfully."

For every I-9 form that's not correct, even due to an error, fines can range from \$216 to \$2,156, according to the U.S. Citizenship and Immigration Services.

"It could get steep for companies that have 100 employees," Grimaldi pointed out, adding that there would be "no mercy there" from the government.

Still, he noted, "I don't know that it's Trump's goal to hurt Long Island businesses that way," but discussions about deportations could have an unintended outcome.

E-Verify, a system that allows businesses to determine the eligibility of their employees to work in the United States,

may also become mandatory, Westover said.

"Right now it's required for federal contractors, but there are also employers who voluntarily participate and some states require it," she added. "The president-elect cannot just enact this on his own; it would have to go through Congress."

And while the system is used for onboarding staff, Congress could require its use to verify existing staff as well, Grimaldi said.

O'Brien recommends that individuals "work on getting the best status they can." So whether it's applying for a green card or citizenship, "now is the time," O'Brien said, noting that the outcome ultimately can benefit family members, including through sponsorship.

O'Brien said that her recommendation on working toward attaining the highest status possible holds true in the business world as well. Foreign nationals that are here on a visa can speak with employers about being sponsored for a green card. "It could still be many years before they get it," she said, adding they should "apply now because the adjudication can change on who will qualify and who won't."

Everyone's case, experts point out, is different. Depending on their current status, there is no one-size-fits-all game plan. Some have a fear of going back to their home country, or a need to be in this country for a child's continued medical treatment.

But it's not all doom and gloom.

"I don't think there will be any significant consequences to people here without status unless they've been convicted of felonies or are members of gangs or have been convicted of drug trafficking offenses – those are the three categories I believe the new adminis-

tration is going to target for removal," said Howard Brill, a Hempstead-based immigration attorney and the past vice chair of the Nassau County Bar Association's immigration law committee. "The procedures in place now to obtain legal status are fairly complicated and complex. Those procedures I think will remain in place."

Brill thinks DACA "will be extended and renewed."

Disha Chandiramani, an immigration attorney with Bretz & Coven, with a satellite office in Holtsville, said those who already have DACA status and wish to renew "should definitely renew it. They have already been exposed to immigration [agents] who know their status."

And even if DAPA is not implemented, those parents of U.S. citizens "may have other options," Brill said.

"They have to seek an immigration attorney to evaluate their case and see if they meet certain eligibility requirements," he said.

The one thing they should not do if they get a court notice "is not go to court," he said, likening the practice to a forfeit. "That's the worst thing to do. They will be ordered to be removed in absentia, and to get the case reopened is very, very difficult."

"I don't think there will be a situation where the government is removing and deporting," he said, noting that the government and immigration courts lack the resources. "There are hearing dates now for 2019 and 2020 because of tremendous volume – judges are overwhelmed with the amount." Chandiramani agreed, noting, "It's not going to be feasible without spending millions and millions of dollars for manpower and due process."

And while added enforcement and new requirements could enhance job opportunities for those authorized to work in the United States, some industries may struggle.

"If it's too much change too fast, it could affect the workforce, especially in industries where it's hard to attract workers – including agriculture and landscaping," Grimaldi said.