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Business Immigration Law Update – New Issues in a Restrictionist Era

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Business Immigration Law Update – New Issues in a Restrictionist Era

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New Priority – Reduce Number of Visa Overstays

President Donald J. Trump has issued a memorandum aimed at reducing the number of visa overstays in the United States. The administration says those overstays undermine the integrity of the immigration system and harm the national interest. The memorandum calls on the secretaries of the U.S. Department of State (DOS) and U.S. Department of Homeland Security (DHS) to propose a plan to address and reduce the number of foreign nationals who remain in the United States beyond their period of authorized stay. The administration has floated the idea of suspending or limiting the issuance of visas to nationals of certain countries and/or implementing an “admissions bond” as possible enforcement methods.

An “overstay” occurs when a nonimmigrant who was lawfully admitted to the United States remains in the country beyond his or her period of authorized stay. DHS, through its various arms, works to maintain arrival and departure records for all foreign nationals based on information collected at border crossings and provided by commercial land and sea carriers. At the end of each fiscal year, DHS publishes an Entry/Exit Overstay Report providing statistical analysis of visa overstays based on country of origin and nonimmigrant category. Interestingly, the overstay rates for fiscal years 2017 and 2018 actually decreased.

The memorandum states that visa overstays put a strain on government resources that could be better utilized elsewhere. While it broadly states that general nonimmigrant visa overstay rates are too high for certain foreign nationals, it specifically calls on the secretary of state to reach out to those countries with combined B-1/B-2 (visitor visas for business or pleasure) overstay rates greater than 10 percent to address contributing conditions. In addition, the secretary of state must also work in conjunction with the attorney general and DHS to develop a list of recommendations

to reduce B-1/B-2 overstays from those countries. The memorandum suggests potential solutions for consideration, including suspending or limiting the issuance of visas to foreign nationals from those countries or limiting the duration of the visas issued.

In addition, the memorandum calls on DHS to take a look at overstays from countries that participate in the Visa Waiver Program (VWP). Foreign nationals from VWP countries do not require a visa to enter the United States. According to the Entry/Exit Overstay Report, foreign nationals from VWP countries are much less likely to overstay. DHS has already implemented a program that notifies VWP travelers when their period of authorized admission is set to expire. Nevertheless, President Trump has asked DHS to provide a list of additional actions it deems necessary to further enforce the program.

The memorandum also proposes the implementation of an “admissions bond” system as a means for improving compliance with visa departure dates, though it is not yet known who would be required to post a bond or what kind of collateral would be required. DOS and DHS have 120 days to put together a plan for the proposed imposition of bonds.

It is not yet clear what impact the memorandum will have on business immigration. While the memorandum has no immediate effect, it seems likely that business travelers travelling on B-1 visas or the VWP in the future are likely to face additional scrutiny about the reasons for their travel and their plans to return home.

Marijuana Use Has Immigration Consequences Regardless of State Law

A recent policy alert issued by U.S. Citizenship and Immigration Services (USCIS) highlights the conflict between federal and state laws when it comes to marijuana use. The alert reiterates that engaging in marijuana-related activities (use, possession, etc.) may trigger findings of federal controlled substance violations, even when those activities are permitted at the state level. In other

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