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COVID-19 ADVISORY

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IMMIGRATION AND COMPLIANCE BRIEFING: POLICY UPDATES IMPACTING TRAVEL, CONSULAR PROCESSING, NONIMMIGRANT DEPENDENT SPOUSE WORK AUTHORIZATION, AND IMMIGRATION ENFORCEMENT

Biden Administration Issues Proclamation to Restrict Direct U.S. Entry from Countries Impacted by Omicron COVID-19 Variant

Effective Monday, November 29, 2021, travelers are not permitted to travel directly to the U.S. if they have been physically present, within the past fourteen (14) days, in any of the following countries: **South Africa, Botswana, Zimbabwe, Namibia, Lesotho, Eswatini, Mozambique**, and **Malawi**. As with prior travel restrictions, the following individuals are exempt:

- U.S. Citizens and Lawful Permanent Residents ("green card" holders)
- Spouse of U.S. Citizens or Lawful Permanent Residents
- Parents or legal guardians of unmarried individuals under the age of 21 who are U.S. Citizens or Lawful Permanent Residents
- Siblings who are unmarried and under the age of 21 of U.S. Citizens or Lawful Permanent Residents who are also unmarried and under the age of 21
- Children, foster children, or wards of U.S. Citizens or Lawful Permanent Residents, or prospective adoptees seeking U.S. entry pursuant to IR-4 or IH-4 visa classifications
- Members of the U.S. Armed Forces; spouses and children of members of the U.S. Armed Forces
- Foreign nationals traveling to the U.S. at the invitation of the government for a purpose related to containment or mitigation of the virus
- Nonimmigrant sea/air or transit crewmembers
- Nonimmigrants pursuant to visas as follows: A-1, A-2, C-2, C-3 (foreign government official or immediate family member of an official), G-1, G-2, G-3, G-4, NATO-1 through NATO-4, or NATO-6 visa; E-1 (employee of TECRO or TECO or the employee's immediate family members)
- Foreign nationals traveling under section 11 of the United Nations Headquarters Agreement

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- Foreign nationals whose entry would not pose a significant risk of introducing, transmitting, or spreading the virus, as determined by the Center for Disease Control Director, or his designee
- Foreign nationals whose entry would further important U.S. law enforcement objectives, as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees based on a recommendation of the Attorney General or his designee
- Foreign nationals whose entry would be in the national interest, as determined by the Secretary of State, the Secretary of Homeland Security, or their designees

In addition to the new geographical travel restriction, the COVID-19 vaccination and testing policies issued on November 8, 2021 remain in effect. Accordingly, most incoming noncitizen nonimmigrants will be required to provide proof of full COVID-19 vaccination prior to boarding a flight to the U.S. Full COVID-19 vaccination is defined as 14 days post-final vaccine dose (i.e., 14 days after the second dose of a 2-dose vaccine such as Pfizer **or** 14 days after the first/only dose of a 1-dose vaccine such as Johnson & Johnson). In addition, all travelers over the age of two, regardless of vaccination or citizenship/immigration status, must provide a negative COVID-19 test within 72 hours (vaccinated travelers) or 24 hours (unvaccinated travelers) prior to boarding a flight to the U.S. (*See our prior client alerts* **here** *and* **here**).

Note that non-essential travel via a U.S. land border is permitted for fully vaccinated individuals.

U.S. Department of State Rescinds COVID-19 Priority Guidance for Consulates

In March 2020, the U.S. Department of State ("DOS") suspended routine visa services at all U.S. embassies and consulates worldwide. Subsequently, in July 2020, the DOS issued guidance on the phased reopening of consular services during the COVID-19 pandemic. Further guidance was issued in November 2020, including a directive on the prioritization of processing certain visa categories, including a de-prioritization of diversity immigrant visas.

Since the initial guidance was issued in March, visa processing backlogs have caused significant "crisis-level" delays in visa processing and have resulted in the complete suspension of processing for certain non-priority visa categories. The November 2020 guidance on visa prioritization has now been rescinded and U.S. embassies and consulates have discretion to develop their own prioritization policies, subject to local COVID-19 policies and restrictions. This policy will enable embassies and consulates to address visa processing backlogs based on local conditions and will permit the normal processing of diversity visa applications, pursuant to local need and policies.

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U.S. Citizenship and Immigration Services ("USCIS") Issues Policy Guidance on Employment Authorization for Certain H-4, E, and L Nonimmigrant Dependent Spouses

Pursuant to regulations, spouses of E and L temporary nonimmigrant visa holders, and certain spouses of H-1B visa holders (E-2, L-2, and H-4 categories, respectively), are eligible to apply for authorization to work in the U.S. as long as their spouses maintain the primary underlying status. However, unlike other categories of employment authorization, individuals with employment authorization pursuant to E-2, L-2, or H-4 status have not been eligible for automatic renewal of their employment authorization upon a timely extension application. Instead, these individuals have only been permitted to begin employment upon approval of their application for employment authorization. With USCIS processing delays, this rule has often resulted in interruptions of individuals' employment authorization, requiring these workers to take unpaid leave and/or terminate employment. This has had negative impacts not only on individuals, but on U.S. employers as well, as productive time is lost and costs of replacing workers increases.

On November 12, 2021, USCIS issued policy guidance regarding a new interpretation of its regulations regarding automatic extension of employment authorization for certain H-4, E, and L nonimmigrant dependent spouses. Under the new guidance, USCIS will consider certain H-4 dependent spouses with approved employment authorization as eligible for automatic extension of employment authorization pursuant to a timely application to extend employment authorization.

Further, E-2 and L-2 dependent spouses will be considered authorized to work in the US incident to their E-2/L-2 status and will therefore no longer be required to file an I-765 Application for Employment Authorization. For I-9 purposes, these individuals may present their foreign passport along with their I-94 as a combination List A document.

Additionally, USCIS is rescinding the 2002 Legacy Immigration and Naturalization Service memorandum entitled, "Guidance on Employment Authorization for E and L Nonimmigrant Spouses, and for Determinations on the Requisite Employment Abroad for L Blanket Petition" (2002 INS memorandum).

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This publication is a summary of legal principles. Nothing in this article constitutes legal advice, which can only be obtained as a result of a personal consultation with an attorney. The information published here is believed accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues.

U.S. Department of Homeland Security to Pause Mass Worksite Enforcement Action

On October 12, 2021, the Department of Homeland Security ("DHS") issued a memo to U.S. Immigration and Customs Enforcement ("ICE"), U.S. Citizenship and Immigration Services ("USCIS"), and Customs and Border Protection ("CBP"), directing those agencies to immediately cease mass worksite enforcement actions. Worksite enforcement actions, often known as "worksite raids," are a form of immigration enforcement that consist of U.S. government agents conducting surprise inspections of workplaces to identify and arrest employees without proof of valid U.S. work authorization. The DHS memo can be read **here** and calls for a refocusing of resources to prioritize employer labor violations over individual employee immigration status violations. This shift in enforcement policy reflects both the Biden Administration's heightened focus on exploitative employers in worksite enforcement actions as well as the labor shortage US employers have faced in the wake of the COVID-19 pandemic. Prior to the memorandum, mass worksite enforcement actions had become less common during COVID-19, though they did not cease. While the prior administration focused resources on mass arrests and deportations of individuals working without authorization, the updated memorandum marks a return to the prioritized enforcement of the Obama administration.

Associate **Ashley Moore** *contributed to this briefing.*

Wiggin and Dana's Business Immigration and Compliance Practice will continue to provide briefings as more information becomes available. Please contact the practice group leader, **Najia Khalid**, at 203.498.4314 or **nkhalid@wiggin.com** if you have any questions or wish to discuss fact- or case specific situations.

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