

The Nuts and Bolts of U.S. Immigration Law and the Impact of COVID-19 Upon Travel and Visa Options Facing Cross-Border, High Net Worth Individuals

Presentation to Houston Estate Forum

James Prappas

Introduction

- ▶ Why is U.S. immigration relevant?
- ▶ The current immigration climate
- ▶ Government agencies involved: USCIS, USCBP, USICE, USDOS, and USDOL

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Topics Covered

- ▶ Key Terms
- ▶ Current Climate
- ▶ Temporary Visas and Green Card Options
- ▶ Citizenship - the prize
- ▶ COVID-19
 - Travel Bans and Border Closings
 - Executive Order issued April 22, 2020
 - USCIS and U.S. Embassy Closings
 - Visa Waiver Program and Satisfactory Departure
- ▶ Intersection of Estate Planning and U.S. immigration and Commercial/Corporate Law
- ▶ Recommendations

Key Terms

- ▶ **Visa** - A permit to enter the U.S.
- ▶ **Status** - This term determines what a person can do in the U.S., i.e. vacation, attend business meetings, or work.
- ▶ **Lawful Permanent Residence** (LPR) aka “Green Cards”
- ▶ **I-94** - This is an electronically issued document by U.S. Customs and Border Protection when a person enters the U.S.
- ▶ **Passport** - Each person from a foreign country must have one to enter the U.S.
- ▶ **Overstay** - A person who overstays his/her period of authorized admission to the U.S.
- ▶ **Out of Status** - This relates to when a person is no longer authorized to remain lawfully in the U.S.

Current Climate

- ▶ The immigrant process does work successfully. Immigration is mentioned specifically in the U.S. Constitution.
- ▶ Delays – Under the current administration, there has been an increase in the number of challenges and denials of NIV and LPR cases.
- ▶ COVID-19 has created additional delays and uncertainty.

Temporary / Non-Immigrant Visas

- ▶ Many types – A to U
- ▶ Non-working/visitor and employment
- ▶ Visa Waiver Program for B-1 (visitor for business) and B-2 (visitor for pleasure)
- ▶ Temporary work visas, including...
 - L-1 Intracompany Transferee
 - H-1B Specialty Occupation
 - E-1 Treaty Trader and E-2 Treaty Investor
 - O-1 Extraordinary Ability

Lawful Permanent Residence, aka "Green Cards"



Lawful Permanent Residence, aka “Green Cards”

- ▶ Generally two ways to obtain: (i) family; or (ii) employment
- ▶ Preference system
- ▶ Process, timing, and delays
- ▶ A Green Card is not forever
- ▶ Tax issues - “Exit” tax

Citizenship and Naturalization

- ▶ Four ways to obtain: (i) At birth; (ii) derivation; (iii) naturalization and (iv) Act of Congress
- ▶ Process
- ▶ Timing – depends on jurisdiction and COVID-19 impact
- ▶ Long term benefits including travel/where you live and estate/inheritance taxes
- ▶ Focus on the “prize” to obtain freedom of movement and related estate planning opportunities

Travel Bans

CORONAVIRUS TRAVEL RESTRICTIONS:

To safeguard the homeland against the further spread of the coronavirus, President Trump has suspended the entry of foreign nationals who have been in China, Iran, and certain European countries at any point in the 14 days before their scheduled arrival to the U.S.

AFFECTED:	FOREIGN NATIONALS	COUNTRIES IMPACTED
	The ban applies to foreign nationals of any country with qualifying travel within the impacted countries listed.	Asia/Middle East: China and Iran. Europe: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland, and the U.K.

NOT AFFECTED:	AMERICAN CITIZENS	TRAVELERS FROM THE U.S.	CARGO SHIPMENTS
	U.S. citizens, legal permanent residents, and their immediate family members can travel to the U.S. but are subject to a 14-day self-quarantine.	Passengers, regardless of nationality, traveling to Europe or Asia are not impacted.	Air and maritime cargo are not impacted.

CORONAVIRUS UPDATE

Travel Bans (cont.)

- ▶ President Trump has issued multiple proclamations in recent weeks suspending the entry into the U.S., as immigrants or nonimmigrants, of individuals who were physically present within the U.K., Ireland, Schengen Area, the Islamic Republic of Iran, and the PRC during the 14-day period preceding their entry or attempted entry into the U.S, subject to certain exceptions.
- ▶ The exceptions include a spouse of USC and LPR.
- ▶ Anecdote - With BA flights departing out of Heathrow, I understand a U.S. citizen with British spouse were permitted to travel. It was reported their marriage certificate and passports were checked 3 times by BA staff at Heathrow prior to boarding a flight to Chicago.

April 22, 2020 Executive Order

- ▶ Temporarily suspends the entry of certain employment-based, family-based and other *immigrants* for 60 days, if they are outside the U.S., and have not been issued an immigrant visa or similar official travel documents.
- ▶ Certain groups including Green Card holders and spouses of U.S. citizens are exempt from the EO.
- ▶ EO does not have an immediate impact on the H-1B, L-1 and other nonimmigrant worker programs. However, within 30 days of the EO effective date, authorities are ordered to review nonimmigrant programs and recommend measures to stimulate the U.S. economy and ensure the prioritization, hiring and employment of U.S. workers. The results of that report *could lead to future restrictions on nonimmigrant employment categories.*
- ▶ ***Future restrictions cannot be ruled out.***

USCIS and Embassy Closings

- ▶ USCIS offices preparing to reopen on June 4, 2020 for limited services.
- ▶ USCIS is accepting and adjudicating cases.
- ▶ U.S. Embassies are closed and most visa interviews have been rescheduled until July 2020.
- ▶ See <https://travel.state.gov/content/travel/en/traveladvisories/COVID-19-Country-Specific-Information.html>
- ▶ Planning Tips
 - Monitor I-94 (see <https://i94.cbp.dhs.gov/I94/#/home>) and visa expiration dates; and
 - Assuming appropriate and qualified, consider filing timely visa extensions asap to avoid delays.

Border Crossing Issues

- ▶ There are travel restrictions in place on the U.S. - Canada and U.S. - Mexico border through June 20, 2020.
- ▶ Travel on the Canadian and Mexican border is closed to “non-essential” traffic. Non-essential travel is currently defined as “travel that is considered tourism or recreational in nature.”
- ▶ Travel to the U.S. for business and work is considered “essential.”

Visa Waiver Program and Satisfactory Departure

- ▶ VWP permits entry for up to 90 days for persons who hold passports from VWP countries.
- ▶ VWP applicants may be admitted to the U.S. for up to 90 days. Need to check I-94 expiration date.
- ▶ VWP travelers already in the U.S. who are unable to depart the U.S. before their authorized period of admission ends may contact USCBP Ports of Entry to request satisfactory departure to remain an additional 30 days.
- ▶ Why is this important?
- ▶ On April 17, 2020, CBP announced that VWP entrants who have been granted satisfactory departure may apply for an additional 30-day extension of their admission period if they remain unable to depart the U.S. because of the COVID-19 pandemic.

Intersection of Estate Planning and U.S. Immigration and Commercial/Corporate Law

- ▶ **Tax issues** including decision to apply for a green card and citizenship
- ▶ **"Exit Tax"** and Estate Planning
- ▶ **Naturalization** - Is the client eligible to apply for naturalization as a U.S. citizen? What are the related estate planning opportunities?
- ▶ **Abandonment** - Assuming the client and/or his/her spouse are LPRs, they may lose LPR status if they live outside the U.S. What is the effect/ impact of abandonment on the client's U.S. and international estate planning?
- ▶ **Sale of Client's Business and Undocumented Employees** - Does the client have any employees who are undocumented? What is the effect on the sales price and related representations and warranties?
- ▶ **Marriage to NRA** - Will the client marry a person who is an NRA and the impact on a Subchapter S election?

Tips to Assist Clients with U.S. Visas or Green Cards

- ▶ Stay tuned - U.S. immigration laws are dynamic and ever changing especially with COVID-19, Executive Orders and the upcoming elections.
- ▶ Be proactive and prepared.
- ▶ Have a passport valid for at least one year.
- ▶ If possible, evaluate the client's long term U.S. plans to determine what estate planning options and U.S. immigration options may be available.
- ▶ Define short term and long term goals, i.e. U.S. citizenship. If eligible and qualified, consider applying for naturalization as a U.S. citizen.
- ▶ **Arrest** - In the unlikely event any client who holds a nonimmigrant visa or LPR status is arrested for any criminal matters, we recommend such person contact U.S. immigration counsel immediately because such arrest can impact (i) the client's eligibility to remain in the U.S.; (ii) travel to/from the U.S.; and (iii) the client's ability to qualify for future U.S. nonimmigrant visas or LPR.
- ▶ **Global Entry** - *We do not recommend* clients who hold a nonimmigrant visa and who work for a U.S. employer apply for and/or use Global Entry at any time, because this can result in the client being admitted in the incorrect visa status.

Questions?

James Prappas

Kane Russell Coleman Logan PC
5051 Westheimer, 10th Floor
Houston, Texas 77056
713.504.9018 cell
713.425.7431 office

jprappas@krcl.com
www.krcl.com

