

Immigration

'Extreme Vetting' Immigration Form Causes Delays, Confusion

A newly implemented State Department questionnaire for visa applicants has the potential to increase delays and uncertainty for businesses that employ foreign workers.

"We're giving low-level visa officers a tremendous amount of discretion to deny visas to anybody for any reason," Reaz Jafri of Withersworldwide in New York told Bloomberg BNA June 2. "It's not good for business," he said.

The questionnaire, which went into use May 25, requires applicants to list their employment, address, and travel history for the last 15 years, as well as their social media handles from the past five years.

The request for social media information is new. The other information previously was collected for only a five-year period, the agency said.

The questionnaire implements a March 6 memorandum from President Donald Trump ordering "heightened" screening and vetting procedures for all visa applicants. During his campaign, Trump had called for "extreme vetting" of immigrants.

Backdoor Travel Ban? Jafri, who heads his firm's immigration practice in the U.S. and Asia, said this "extreme vetting" is a "soft, subtle way" of imposing the president's travel ban without actually putting the order into effect.

A revised version of the ban, which originally was issued in January, was signed the same day as the visa applicant vetting memorandum. Both versions have been held up in the courts.

The Trump administration is asking the U.S. Supreme Court to address the matter before the justices take a three-month recess at the end of June.

"The fact that we don't have very clear guidance on who will be administered this additional questionnaire and who will be subjected to this enhanced vetting is concerning," attorney Sam Adair of Graham Adair in Austin, Texas, told Bloomberg BNA June 2. "Employers really like to be able to plan as much as possible," he said.

"The potential for randomness here definitely will cause some distress," Adair said.

"We are constantly working to find mechanisms to improve our screening processes and to support legitimate travel and immigration to the United States while protecting U.S. citizens," a State Department official said in a statement provided to Bloomberg BNA June 2.

The agency "has begun collecting additional information from visa applicants worldwide when a consular officer determines that such information is required to confirm identity or conduct more rigorous national security vetting," the official said. The agency expects to hand out about 65,000 questionnaires, according to a Federal Register notice announcing it.

The State Department says the questionnaire won't be issued to everyone, "but my sense is it's going to be very ad hoc and arbitrary, which makes planning impossible," Jafri said.

It's also unclear how the agency will use the information provided, Jafri said.

"Consular officers will only use this additional information to vet applicants for potential visa ineligibilities under existing U.S. law," the State Department official said. "There are no visa ineligibilities under U.S. law on the basis of race, religion, ethnicity, national origin, political views, gender, or sexual orientation," the official said.

Delays Likely At the very least, there are likely to be delays stemming from having consular officers checking up on all the additional information, Jafri said.

The questionnaire only should affect a "fraction of one percent" of the more than 13 million visa applicants each year, the State Department official said.

But Adair said "it's going to take a lot of resources to be able to go through everything," and that means agency employees will have less time for other visa applications.

Under current procedures, some visa applications already are subjected to additional administrative processing, he said. If the same officers conducting those checks also are processing the questionnaires, delays are inevitable, Adair said.

Administrative processing already can take weeks or even years, Jafri said. And it's impossible to get information from the State Department on the status of the visa applicant's case, he said.

U.S. Citizenship and Immigration Services, which adjudicates employers' petitions filed on behalf of foreign workers, is known for its delays. But immigration attorneys usually are able to engage with USCIS officers and help get the case approved, Jafri said. "At the embassy level, we can't really do anything," he said.

In prior years, a worker could get his or her visa approved by the State Department within a couple of days, "barring something exceptional," Jafri said. Now, employers will have to deal with State Department delays on top of USCIS delays, he said.

Jobs Moving Overseas? Jafri said he's had clients that have lost opportunities because of an inability to staff a project with a foreign worker. Other businesses are looking at sending foreign talent to offices in other countries, he said.

But making it harder for businesses to bring over foreign workers isn't going to result in more jobs for Americans, he said.

"When they recruit, they recruit for the best talent that's out there," Jafri said. They don't "start out by saying I want to go hire a foreign worker," he said. "Companies don't do that because they want to, they do it because they have to," he said.

Adair is more concerned about foreign workers already in the U.S. who have to renew their visas at overseas posts.

Some workers will take a vacation or go on a business trip abroad and get a new visa during that time, Adair said. But a process that might previously have

taken one or two weeks could now result in that worker getting stuck outside the U.S. for months, he said.

And that causes "significant disruption" to the worker's employment, the ability to do his or her job, and to the employer that now has to make do without its employee, he said.

But "businesses can typically find ways to work through the process," Adair said. "There may be an increase in some delays," but "with proper planning, businesses are going to be able to move things and make it work."

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Text of the new questionnaire is available at <http://src.bna.com/puf>.

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