

Kate Kalmykov ([00:12](#)):

Hello, everyone, and welcome to the Immigration Insights Podcast, presented to you by the Global Immigration and Compliance Group at Greenberg Traurig. I am Kate Kalmykov, your host, and I'm delighted to be joined today by my co-chair of the Global Immigration Group, Courtney Noce. Courtney, thank you so much for agreeing to be on the podcast. We have a lot to talk about today. Can you introduce yourself to our viewers?

Courtney Noce ([00:39](#)):

Absolutely. As Kate said, my name is Courtney Noce. I co-chair the Immigration Compliance Group here at Greenberg Traurig with Kate and I am delighted to be with everyone today. I think saying that we have a lot to talk about is potentially an understatement. So, we appreciate everyone who's joining us and we'll try to get through as much as we can.

Kate Kalmykov ([00:59](#)):

Well, let's talk about the developments of the last two weeks. It's been an interesting time to be an immigration lawyer and it's been a whirlwind for us and for our clients. Almost two weeks ago, the administration announced that there would be a new \$100,000 fee on any new H-1B petitions, and it took a while to understand from the proclamation that it would apply to new petitions. We're still waiting for clarity on a number of questions that we have and the American Immigration Lawyers Association has submitted a query to the administration. But Courtney, do you want to give a synopsis of the proclamation?

Courtney Noce ([01:47](#)):

Sure, and to Kate's point, really what we saw was a proclamation announced on a Friday at the end of business and that proclamation had some language in it that was a little bit confusing or unclear in terms of what its application was going to be. So, you really saw a flurry of activity and concern from individuals who were both in the United States, but in particular outside of the United States because of some language that referred to H-1B holders outside of the United States.

([02:24](#)):

We were watching eagerly to see if there would be announcements, clarifications from the government regarding who would actually be impacted. So, we really saw this widespread discussion and talk, I guess we could say, about the proclamation because it was a little bit unclear what the impact would be initially. Over the weekend, of course, we were working with companies and employees who were traveling, et cetera to take these updates.

([02:57](#)):

We received updates from CBP as well as USCIS in terms of how the proclamation would actually impact individuals and really arrived at a point by the end of Sunday and into Monday where we understood that individuals who already had H-1B visa stamps, those who did not have H-1B visa stamps but had H-1Bs that were filed prior to the proclamation taking effect on that Sunday, as well as individuals who were going to be filing extensions within the United States would not be impacted by the proclamation.

([03:35](#)):

So, the government really narrowed the focus or explained what the intent was behind the focus of those who would be impacted. In terms of why the proclamation came about, this is really the government taking steps to vet out fraud and discourage fraud and misuse of the H-1B program.

Kate Kalmykov ([03:58](#)):

I think also there is a perception that if this high fee is imposed, which probably is true, less employers will sponsor foreign nationals and there will be more positions available for US workers. Whether or not that's true remains to be seen, but a lot of companies are global and their operations are global and it is extremely difficult to recruit talent without the sponsorship of foreign nationals. The US is a place and a destination for many to get their higher education and retaining that talent in country has been very important for many companies, whether it's in tech or pharma or our hospitals. They rely on a lot of H-1Bs for doctors. That leads us to questions on the contents of the proclamation.

([04:59](#)):

So, H-1Bs, there is a quota obviously for them, 65,000 given annually with an extra 20,000 for anybody who has a US master's degree or higher. But there is also a concept of a cap exempt H-1B, where if you are a nonprofit research institution, an institution of higher education, or affiliated with an institution of higher education like most of the hospitals in the country, you can sponsor H-1Bs and not be subject to the cap. We are still awaiting clarity to understand whether cap exempt issues will have the new fee apply. Interestingly, the fee is per application, not per employer. So, it is a significant cost to many and it's also probably going to close the door for many startups and small companies to sponsor H-1B employees.

Courtney Noce ([06:01](#)):

I would agree. A lot of the questions that we have had come up have been from those small and mid-sized companies where they really don't have the budget to be able to pay that additional fee for an employee that's going to be sponsored on an H-1B. So, we of course have seen announcements that the intent was to discourage use of the H-1B and in large part target some of these companies that may use a large number of H-1Bs, but that question stands what the impact will be on these smaller and mid-sized companies. Those are some questions that we still are not able to answer because we don't really know how the exceptions will be applied.

([06:41](#)):

That was one of the things that was announced in the proclamation is that there would be national interest exceptions or exemptions and we don't have a lot of guidance, if any, on what that will look like and whether that will be applied with relative ease for cap exempt organizations for example or individuals and of course how that request for an exemption will be made.

Kate Kalmykov ([07:07](#)):

Absolutely. Probably economic harm as we have seen in many different instances where we've had these travel bans imposed or previously travel was restricted under COVID, they didn't really care about economic harm as a factor. So, it remains to be seen how they're going to decide who is exempt from the fee. There were also questions on whether an amendment to the conditions of employment in the H-1B qualifies as a new filing, right? If you're elevating somebody, they're changing positions, their salary's increasing or maybe they're just switching locations, they have to file a new H-1B, and in those situations, we're still waiting for clarity that the fee doesn't apply.

([07:55](#)):

Does it apply to change of employer petitions? That person has already been counted in the cap, in the quota, but now they're changing and that employer who's going to sponsor them is now filing for them for the first time. So, we have seen approvals in our practice, but we don't know if later guidance is

going to change the approvals that we are seeing. Of course, we have no direction yet on how to pay the fee.

Courtney Noce ([08:24](#)):

Yeah, I was going to mention that one as a big one because at this point in time with many applications, and of course, we're speaking with you all at a point in time. So, I am sure when some of you actually are able to listen to this that hopefully we've had some progress and clarity on process at that point in time. But now we are proceeding with filings and waiting to see what will happen from a request for the fee perspective. We of course are looking forward at the H-1B cap for this coming year when we know that the proclamation will most certainly impact a large number of individuals, but until that point in time, we don't have guidance on how the fee will be paid and anticipate that that will need to be communicated and updated and potentially we will see new forms.

([09:16](#)):

We also have seen a lot of questions surrounding whether the fee will be paid if someone doesn't remain in the United States or if they do remain in the United States and if that fee proof is going to need to be provided to the Department of State for visa issuance, for CBP reentry, et cetera. So, a lot of things surrounding the fee that we're continuing to monitor and hope to hear more about soon.

Kate Kalmykov ([09:44](#)):

And of course, we had litigation filed on Friday challenging the validity of the proclamation and we're going to continue to monitor the status of that and how it impacts cases. But certainly, I think the takeaway for employers is we're operating in a very uncertain time and that's challenging when you're trying to send employees overseas, when you're a global company, people are traveling. You really need to re-examine who you're sending to travel, what status they're in, and maybe even consider whether it makes sense to have a US person take that business trip.

([10:23](#)):

Also, when we talk to many employers, their budgeting for 2026 is already done and now they have to reconfigure, "Who are we going to sponsor if this fee in fact remains in effect, and are we going to change the course of what we do?" Maybe we're not going to sponsor in the US, but maybe we're going to move a certain portion of our business overseas. Of course, once employers make that investment, it's very difficult to get them to change their direction and move back to the US. So, that is definitely something to think about. Also, we may see a spike in more global mobility cases rather than inbound US immigration cases.

Courtney Noce ([11:08](#)):

And with regard to travel, not only are we seeing questions come up surrounding business trips and who to send and the risk level, but there's an additional component of individuals who may want to be traveling over the holidays or plan to travel in the future for personal reasons and really the stance that companies take and the support that they provide or do not provide and the level of encouragement for travel is something to consider as well. So, we've seen a good number of those questions and they're not easy questions.

([11:42](#)):

We know that a lot of people wait in the United States for quite some time to take these trips to see family members and have families that have occasions that are occurring. But it is, as Kate mentioned, an uncertain time and travel comes with a risk as it did prior to the proclamation.

Kate Kalmykov ([12:02](#)):

And in addition to that, we also had a new decision of the administration that starting in November, there would be no third country processing for visas. So, individuals do have to go back to their home countries to process at their consulate or embassy where they have nationality or residence. If somebody is from a high volume post, I'm thinking India, China, London, you really need to think about how much time they may be spending overseas before they have the visa issued because in combination with the requirement to go to your home country, they've also now taken away visa waiver interviews for renewal.

([12:46](#)):

So, now you do have to attend an interview when you're going to renew your visa where previously in certain situations, they were allowing you to mail in your passport. They would stamp it and it would be returned to you. All of that adds to the queue and to travel delays.

Courtney Noce ([13:05](#)):

I don't know, Kate, if you're receiving a lot of questions about this but I feel like another topic that's coming up quite frequently is the business visitor travel. So, when we're talking about visa stamping and travel delays and ultimately visa processing delays, in some instances, are people asking you, because I feel like they're coming to me and asking, can we use a business visitor visa for travel now? Can we use ESTA? And there most certainly have been some stories in the news recently where given ICE enforcement efforts, individuals got caught up in some problems using those types of visas, but is that something that you're seeing as well?

Kate Kalmykov ([13:50](#)):

Well, I think there's a lot of confusion on that issue. We saw that there were large scale raids in the news and people have used the B-1 business visitor visa or ESTA, which allows you to partake in business visitor activities. So, what's a business visitor? Somebody who can come here temporarily, they're not getting paid in the US, they're staying on their home country payroll, but they can engage in negotiations of contracts, trainings. They can attend conferences.

([14:19](#)):

They can install proprietary machinery or software and it's temporary in nature, but you're not supposed to be here working in that status. So, I think when we get those inquiries, I tell people right away, this is not a substitute for a work visa. If the trip is truly short in nature, in duration and it is truly visitor in its intent, then it's okay. But if it's not, this is something that the government is hyper-focused on. They want to make sure that you have the correct visa when you're coming into the country. If you don't, you can be prepared that they're going to do site visits and in egregious situations raids and nobody wants to be the next headline on the news because they didn't work properly, the immigration system and use the correct status for work.

Courtney Noce ([15:16](#)):

One of the things that I've been telling clients as well is this is not something that is new. The law has not changed regarding the ability to use these visitor programs and visas. It is just that we're seeing an increase in enforcement. So, just because an organization was doing something in the past doesn't mean that it doesn't need to be vetted and verified at this point in time. A lot of that is really making sure that there's good communication internally with the company so that individuals sitting over immigration

and mobility have the ability to look at an individual, at a matter, at a case that is coming over to ensure that the proper classification is being used.

[\(16:00\)](#):

I think that really is not limited to business visitors, but in the use of all different classifications and categories. We could say not only in the United States and outside of the United States, but when we're looking at student visa use, et cetera, just making sure that someone with knowledge of immigration and an organization is ensuring that the organization is being compliant.

Kate Kalmykov [\(16:26\)](#):

I think compliance is key, especially in the enforcement climate that we're in. USCIS has recently expanded immigration enforcement authority and plans to establish special agents. After 9/11, the INS was split up with the ICE, the Immigration and Customs Enforcement being the enforcement arm of immigration, and USCIS, which is the US Citizenship and Immigration Service being the benefits arm of immigration. Now we see a switch in the verbiage and the messaging. If you follow them on Facebook or Instagram, you see it every day.

[\(17:07\)](#):

They talk about enforcing the immigration laws, cracking down. So, that's very important for many companies who sponsor foreign workers because you can bet even if you're not using B-1s, even if you're not using ESTAs, but you have H-1Bs, you have L-1s, you have E-2s or other foreign nationals working for you, that there is now a higher chance that the government is going to show up and make sure that people are working pursuant to the application that was submitted for them and the representations that were made to the government when they were approving them to work in the United States. That leads us to Project Firewall.

[\(17:51\)](#):

So, we've been talking about USCIS and ICE and to some degree the consulates overseas, but the Department of Labor is also involved in the adjudication of immigration benefits. So, Courtney, tell us a little bit about Project Firewall and what employers can expect in that respect.

Courtney Noce [\(18:09\)](#):

Sure. So, when you were talking about compliance and enforcement, I was thinking a lot of times it gets confusing. Are we having enforcement to try to see if individuals are at work sites when they're not authorized to work? Yes, we do, but we also have these controls which have been very successful in the past for USCIS and Department of Labor to make sure that we are complying and that companies are complying with the requirements of a particular visa classification. So, it doesn't mean that the company has done anything wrong.

[\(18:42\)](#):

Sometimes these investigations can be spurred by internal reports or notifications to the government, but sometimes they are completely random just to make sure that companies who have traditionally used visa programs properly are still doing so. So, this is where it's really critical internally to make sure that the company is notified of position changes, whether those are location changes, whether they are role changes, because we do see visas in particular the H-1B that is extremely focused on both position and location and that impacts wages and impacts the visa's validity.

[\(19:23\)](#):

So, something to most certainly monitor. Kate, when you're talking about Project Firewall, I feel like that got a little bit lost in the mix because the \$100,000 H-1B fee was so front of mind for everyone because that number really represented a significant increase in any cost associated with the H-1B, but this is something that was also focused on and announced. Of course, the proclamation also indicated that there would be a focus on H-1B wages as well. So, again, trying to make sure that companies are doing the right thing and that what they have submitted to immigration is what is actually happening on the ground.

Kate Kalmykov ([20:03](#)):

And that was actually also reiterated in the H-1B proclamation that the H-1Bs have been abused, that foreigners have been paid less to displace US workers, and that the goal of the proclamation, which is valid for one year, is to stop that. So, we'll see as we said if that goes forward. But we also have another change to the H-1B that's been proposed, which is to change the way the H-1B selection process works. The way it works now is it's a random computer-generated lottery. There's about a one in five, one in six chance of securing an H-1B.

([20:44](#)):

Anyone with a bachelor's degree or higher or experience that's equal to a bachelor's degree or higher can apply. The UK for many years has used a point system where they have basically created levels of people that they want to attract for their version of the H-1B. In the past, Trump has said that that is something that he supports. So, now we've seen it in this proposed change to the H-1B selection process. So, Courtney, do you want to walk us through what our changes would be to that if they were implemented?

Courtney Noce ([21:21](#)):

Sure. So, basically, the points are going to be allocated based upon the level of role. So, when we're looking at an H-1B, we have occupational classifications in which we're working, and then based upon the years of experience that are required and wages, we have different levels for the position. So, essentially, what this rule is proposing is that there will be a focus on that wage level and multiple entries into the lottery will be given as we increase that wage level tree, so to speak. Now, one of the things that also is addressed in the proposed rule is what will happen with multiple entries.

([22:06](#)):

So, say we have one employer who puts an H-1B entry into the lottery and they are going to be at a wage level one versus another employer placing one in a wage level four, we're going to see the lowest denominator there pulling down that entry. We also are seeing a lot of focus from companies on what that means from a location perspective because, of course, H-1Bs are location specific. So, that wage level two in Seattle may look different than the wage level two in Atlanta. Those are also considerations when we're looking at the lottery. So, to Kate's point earlier about the fact that companies are looking into how they're going to handle the lottery process and what their budgets look like, this is another analysis point that companies are considering. Where are people located? Where do growth plans make sense and what is the impact going to be on potential selection?

Kate Kalmykov ([23:06](#)):

I think one of the impacts is that obviously more points in the weighted selection process are going to be given to people who will have more work experience, higher education levels. So, it's really going to shut out post-F-1 OPT hiring, which many companies currently do. They have students that begin to work for

them in OPT, they really like them, they decide to sponsor them, but under the point system, preference is definitely given to higher paid, more experienced positions.

Courtney Noce ([23:46](#)):

I think I saw reports that we've seen a decrease in international students that are coming into the United States, and that could be in part because of some of these immigration changes as well as the challenges that individuals have experienced and will continue to experience in being able to obtain those H-1Bs. As you mentioned earlier, Kate, we already have a lottery process and individuals that don't have a US master's degree are of course falling into that initial 65,000 availability. So, it's not easy to be selected in the lottery as is. That of course impacts individuals and what they feel their future plans can be.

Kate Kalmykov ([24:30](#)):

There's a lot of proposed changes for students as well. We could do a separate podcast on that with changing their expirations to finite expiration dates that have been proposed and things like that. We also represent a lot of universities and obviously for them, the terminations that were happening earlier this year and stuff. We can definitely do a follow-up episode on that. I want to discuss the Gold Card as well.

([25:00](#)):

So, good things come all at once. So, in the same Friday that we had the H-1B proclamation, which probably made the most noise because \$100,000 fee, the administration also introduced the concept of the Gold Card, which they had initially loaded at the beginning of the year. It definitely was different than they had initially envisioned it being. Essentially, it says that if you make a gift to the US that's \$1 million or a company on your behalf makes a \$2 million gift, no expectations of return, like with the EB-5 program, you can get the Trump Gold Card and they will follow up with an announcement about the platinum card. That will be at a \$5 million price tag.

([25:51](#)):

With the platinum card, you will be able to spend 280 days a year in the US without becoming subject to our worldwide tax regime, which of course is the game changer for high net worth foreign nationals. Now the interesting thing is when they initially floated the idea of the Gold Card, they said they wanted it to replace the EB-5 category. When they now introduced it about a week and a half ago, it now appears that this is going to be in the EB-1 and EB-2 categories. So, obviously, the EB-2 category is national interest waivers. It's our perms for people who have a master's degree or higher or equivalent experience, a bachelor's plus five and higher or master's degree.

([26:39](#)):

EB-1s are our extraordinary ability aliens, outstanding researchers and professors, and our multinational managers and executives. Now, there is a worldwide backlog in EB-2, and if you are an Indian national, you are going to be waiting decades before you can get a green card in the EB-2 category. But EB-1 for China and India also has a backlog, and those have traditionally been the highest users of the EB-5 program. So, I think we have two issues we need to grapple with. What's going to be the demand for the Gold Card?

([27:17](#)):

Two, is the business community going to challenge it being put into the EB-1 and EB-2 categories? Because it is further creating a queue if people begin using it. So, Courtney, if the Gold Card is enacted

the way the Trump administration envisions it, how do you think the business community and companies will react?

Courtney Noce ([27:42](#)):

Well, I do have concerns about companies reconsidering the green card process if we have even more significant backlogs and also candidates being interested in that long-term green card process in the United States. So, I think this is where companies will again look to some of the global mobility opportunities and options in other countries that you mentioned. I think at this point in time, it is already quite a significant weight, as you mentioned, for certain individuals who make up a large portion of the technology worker population as an example. That further delays most certainly could be challenged by businesses and impact their recruiting efforts.

Kate Kalmykov ([28:26](#)):

I also just don't see a scenario in which most companies would really use a \$2 million sponsorship to sponsor an employee. There are plenty of other green card options that they can use that are a significant lower cost. I mean, \$2 million seems very high for most budgets, and we are living post-COVID in a very budget-conscious environment.

Courtney Noce ([28:52](#)):

I think if we're looking at some of the visa categories that exist already in addition to the green card classifications, if a company is going to support that spend on an employee, they typically would be eligible for an Extraordinary Ability Visa or an Extraordinary Ability Green Card, et cetera, based upon some of their work history. So, I would agree with you. I think that number really represents more something that individual investors may come over and pay, but even certain countries have other options. I will most certainly defer to Kate as our investment visa expert on this podcast, but it does raise certain questions for how this will actually work and what the business community response will be.

Kate Kalmykov ([29:41](#)):

And I do think there is a contrast between how the business community will react versus individual investors, because I think with individual investors for high net worth foreign nationals, global mobility is key, passport is freedom, the green card is freedom. So, if they can afford to do Gold Card and also have some tax benefit from it, they will do it. I think there is a perception that it's a little bit more of a sure thing than the EB-5 because the EB-5 has a job creation requirement attached to it. If the business is not successful, then the investor not only can lose their money, but they can also lose the green card status. We have definitely seen that happen in the market.

([30:26](#)):

Also, the EB-5 gives a temporary two-year green card, and at the end of the two-year period, you have to show that the business you have invested in has created the job. So, it's a longer process here. If you've put it under EB-1 or EB-2, what the Trump administration is proposing, it right away gives individuals a permanent green card status. So, we will continue to track this and keep everyone apprised. There's definitely a tension between individual concerns, a desire to attract foreign direct investment into the economy, and the realities for US businesses, whether we're talking about H-1Bs, entrepreneurs, or investors. Courtney, thank you so much for joining me today. It's always a pleasure to be able to speak with you and to get your insights.

Courtney Noce ([31:17](#)):

Thank you so much for having me.