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2018 Brings New Changes to Various Business Immigration Programs

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Since taking office, President Donald Trump has issued a series of immigration-related executive orders and proclamations that have become the general framework for the future management of U.S. immigration policy and programs. In response to the President Trump's directives, Department of Homeland Security ("DHS") has begun to make significant changes to existing immigration programs. Here is an overview of the business immigration landscape as we enter 2018. However, please note, given the fluid dynamics of immigration policy, all or some of this may be subject to change.

THE NEW H-1B VISA PROGRAM AND ITS IMPACT ON BUSINESSES

Brief History: The H-1B visa program allows U.S. companies to temporarily employ foreign workers in professional occupations typically requiring a minimum of bachelor's degree or higher or its equivalent. Congress has a mandated cap of 65,000 H-1B visas (commonly known as the "regular cap") and an additional 20,000 H-1B visas for beneficiaries who have earned a U.S. master's degree or higher (commonly known as the "advanced degree cap"). U.S. Citizenship and Immigration Service ("USCIS") begins accepting H-1B petitions that are subject to the annual cap six months in advance of the government's upcoming fiscal year (October 1). For nearly a decade, USCIS has received more H-1B petitions than it can accept for processing. Therefore, USCIS conducts a computer generated random selection process (the "H-1B Lottery") to notify employers which of their petitions has been accepted for processing.

2018 Changes: DHS has stated that it plans to revise the lottery process for the upcoming fiscal year. However, given the recent government shutdown and negotiations on other immigration programs, it appears that any changes may not be implemented in time for this year's filing deadline of April 1. Nevertheless, the proposal under consideration is a pre-registration system for cap-subject H-1B visa applicants. DHS appears to be looking to revive a 2011 proposal where employers would submit certain specified information about desired H-1B beneficiaries to USCIS through an online registration system. USCIS would then run the lottery against those submissions and, if that registration is selected in the lottery, only then would the complete H-1B petition be submitted to USCIS for processing.

The agency indicated it may also modify the selection process, currently completed through a random electronic lottery, so that H-1Bs would be awarded to the "most-skilled or highest-paid petition beneficiaries," as was contemplated in President Trump's "Buy American Hire American" **executive order** in April 2017. To date, there are very few details available about how the new selection process will work and what criteria will be used to evaluate the H-1B petition during the pre-registration process.

In the last six months, USCIS has already started to implement informal changes to the H-1B program to toughen up its review of H-1B petitions. As a result, USCIS has doubled the amount of Request for Evidence notices that it has issued in H-1B cases, and the denial rate has also increased by the same measure. The Requests for Evidence and denials issued by USCIS seem to focus on challenging (1) whether a position truly requires a bachelor's degree in a specific and related field; (2) whether a position receiving a Level 1 wage under the Department of Labor's prevailing wage guidance truly qualifies as a "specialty occupation;" and (3) whether the position was sufficiently "entry level" to justify the use of a Level 1 prevailing wage. USCIS has also announced that it is changing its longstanding policy of giving deference to a previously approved H-1B petition – indicating that USCIS may be intending to apply its new tougher H-1B standards to extension petitions as well.

In addition, DHS plans to propose a rule to revise the definition of "specialty occupation" for H-1B eligibility to "increase the focus on truly obtaining the best and brightest." It appears that such a new rule would also revise the definition of "employment" and the "employer-employee relationship," and add a new requirement designed to ensure that employers pay appropriate wages to H-1B workers. The target effective date of this change is October 2018. There is currently very little detail about such changes, so it is unclear whether these proposals may be lawful without an act of Congress.

The series of new proposed rules will likely focus on restricting H-1B workers, but it is unclear how much will require a legislative fix rather than just formal rule making or informal changes of practice. Even if some changes can come about through formal rule making, the prerequisite notice and comment rulemaking process often takes six months or longer, so it is not clear that the Administration will have time to make such substantial changes to the H-1B filing process before the FY2019 cap season begins on April 1, 2018. It is also unclear if adjudication of those petitions, that often can take months, will apply any new standards developed while the petitions are pending with USCIS. Employers should take care to set realistic expectations for business stakeholders regarding timelines and processing times, as well as the level of scrutiny each petition may undergo.

WILL INTERNATIONAL ENTREPRENEURS BE ADMITTED TO THE US IN 2018?

Brief History: The Obama-era International Entrepreneur Rule ("IE Rule"), which had been scheduled to go into effect on July 17, 2017, would allow qualifying foreign entrepreneurs to come to the U.S. to establish, oversee and grow their businesses. If an applicant met the established

investment and business growth standards, the applicant could be granted advance parole to enter the U.S. and work authorization for up to a total of five years, as well as a potential path to permanent residence. However, six days before the IE Rule was set to take effect, the current Administration published its own rule delaying its implementation until March 14, 2018. In fact, the Administration indicated that it was likely going to rescind the IE Rule. National Venture Capital Association, Omni Labs, Peak Laboratories LLC and two foreign entrepreneurs from the UK who had launched LotusPlay filed a suit in federal court to enjoin the Administration's delay of the IE Rule on the grounds that the delay was implemented without giving the public the required notice and chance to comment. In December 2017, the U.S. District Court for the District of Columbia ruled that the Trump Administration had indeed implemented the delay without following the necessary Administrative Procedures Act (APA) and issued an order enjoining the Administration's delay and ordering the implementation of the IE Rule.

2018 Changes: After the District Court decision, DHS announced that it would be taking steps to implement the IE Rule to comply with the court order. However, the agency simultaneously announced that it is in the final stages of drafting a notice of proposed rulemaking to repeal the rule. Therefore, while the IE Rule is now technically in effect, employers and foreign investors are cautioned to continue to monitor both the agency's implementation of the rule and the regulatory process. The repeal of the IE Rule can take several months, so it is unclear if anyone will be granted this discretionary admission in the meantime and, if granted, what that could mean to their admission to the U.S. if the rule is eventually revoked.

NEW SCREENING FOR BUSINESS TRAVELERS FROM VISA WAIVER COUNTRIES

Brief History: The Visa Waiver Program ("VWP") allows citizens of 38 countries to travel to the U.S. for business or pleasure without having to obtain a formal visa by obtaining a pre-clearance known as Electronic System of Travel Authorization ("ESTA"). The ESTA registration is valid for two years and allows stays of up to 90 days per visit. Visa waiver programs are reciprocal, allowing U.S. citizens to travel to those countries without a visa as well. Approximately 20 million visitors a year participate through this program. In December 2017, the Trump Administration began to use U.S. counter-terrorism data to screen travelers under this program.

2018 Changes: It appears that DHS will continue to review countries participating in the program and will propose a new rule to mandate the implementation of information sharing arrangements by systematically screening travelers against U.S. counterterrorism information. As part of the U.S. counter terrorism information collection, DHS has already started assessing VWP countries and their safeguards against insider threats at the member countries' airports, especially those with direct flights to the U.S. DHS is also looking to have U.S. federal air marshals operate on board U.S. air carriers for last-point-of-departure flights to the U.S.

In addition, the Administration will also crack down on visitors who overstay their 90-day period covered by the program. It will evaluate the countries that have high rate of overstay (2% or

higher), and launch a public awareness campaign on consequences of overstays. DHS reports that only four countries so far will be required to conduct this education campaign: Greece, Hungary, Portugal and San Marino. Presently, visitors who violate the 90-day rule often have their ESTA status revoked.

It is unclear what additional consequences may result from high rate of overstay. One possible consequence may be that a particular country could temporarily be taken out of the VWP program. DHS will likely request Congress to codify VWP requirements related to the reporting of foreign terrorist information to multilateral organizations, such as INTERPOL and EUROPOL. In addition, DHS will urge Congress to allow it to systematically collect, store and analyze passenger travel data and identify information such as full name, date of birth and nationality (what the travel industry calls advance passenger information/passenger name records along with "other" relevant travel information). This certainly has non-citizen privacy concerns, so it remains uncertain how much data collection the government will ultimately be able to collect and store.

Given that DHS and Congress are scrutinizing VWP, if you are a national of the current 38 participating countries, this can lead to changes that can affect your future travel to the U.S. In addition, if you utilize this method of travel to the U.S., it appears that the U.S. will, at the very least, review data about your travel.

SURVEILLANCE AND EXTREME VETTING ISSUES

Brief History: The Foreign Intelligence Surveillance Act ("FISA"), Section 702 is a surveillance authority that is part of the FISA Amendments Act of 2008. It was created as a way for the intelligence community to collect foreign intelligence from non-Americans located outside of the U.S. As written, the law cannot target U.S. citizens, who are protected by the Fourth Amendment's prohibition on unreasonable searches and seizures. But the law gives the intelligence community broad authority to target foreign intelligence in ways that often inherently and unintentionally sweep in Americans' communications. It appears that DHS and Transportation Security Administration ("TSA") have begun to promulgate policy to collect biometric data on all international travelers entering the U.S. under this broad discretion.

After 9/11, DHS began cursory biometric screening of foreign nationals' entry and exits. More than a decade later in 2016, DHS launched a pilot program to expand biometric collection by implementing facial recognition technology. However, the new pilot program captured biometrics of **all** travelers, ***including U.S. citizens***, on international flights. The program was piloted out of Hartsfield–Jackson Atlanta International Airport, one of the busiest airports in the world. Late last year, the program expanded to Washington Dulles International, George Bush International Airport in Houston, John F. Kennedy International New York, as well as a few other airports. Last month, the Customs and Border Patrol ("CBP") announced that its facial recognition program will be implemented at the top 20 U.S. airports and land borders in 2018. The expansion of this program will allow the government to track 97% of **all** travelers on international flights.

CBP reports that U.S. citizens' biometric information is discarded after the verification is confirmed at the checkpoint. All data for non-U.S. citizens is to be stored for 75 years after collection. However, it appears that there is no system in place for expunging data collected on a foreign national once that person becomes a U.S. citizen. The biometric data collected from travelers is cross-referenced with criminal, immigration and terror-watch databases. The concern is whether this data will also be used outside the scope of border security, such as for surveillance while in the U.S. There are also data security issues if there is a data breach.

It is debatable whether this new biometric screening is lawful under current privacy laws, particularly to the extent it is applied to U.S. citizens. Several members of Congress have introduced bills attempting to codify DHS' increased biometric surveillance, including Senator Cornyn (S. 1757) and Representative McCaul (H.R. 3548). Other members of Congress are drafting legislation to limit the data collection. Additionally, it is possible that expanded biometric screening could be included in upcoming legislation related to the Deferred Action for Childhood Arrivals ("DACA").

INSPECTION OF ELECTRONIC DEVICES

In 2017, CBP expanded its controversial inspection and search of electronic devices of travelers applying for admission to the U.S. under a 2009 CBP policy. On January 4, 2018, CBP issued a new directive that supersedes the 2009 policy. CBP claims that the new policy "enhances the transparency, accountability and oversight of electronic device border searches" performed by border agents.

The new directive provides federal customs agents with broad authority to conduct "basic" searches of electronic devices without suspecting the traveler of any criminal wrongdoing. In general, a search of a traveler's electronic device will qualify as "basic" if the agent (1) conducts the search in your presence, (2) over a relatively short period of time, (3) using no more advanced technology to look through the data than is available on the device (not on the cloud), and (4) by clicking or scrolling through your device in the way an average user would. Officers shall ask travelers to put their device in an "offline" or "disable their network connectivity" during such searches.

The new guidance also states that "advanced" searches can only be conducted if there is "reasonable suspicion" of unlawful activity or "national security" concerns. Such searches could result in the detention of the device for further review, but for not more than five days. If your device contains information protected by attorney-client privilege or confidential trade secrets, you should inform the agent of this. According to CBP policy, materials that are privileged and/or confidential are subject to specific protocol for review so that the information can be protected. However, there are no protections for medical records, proprietary research or work products by journalists or authors.

In 2017, CBP searched 30,200 electronic devices, which is three times the number searched in 2015 and about 50% more than the number searched in 2016. Moreover, although border agents have broad authority to conduct electronics searches, their authority is not limitless. The law is far from settled in this area, and it is likely to evolve in the next few months and years. In fact, there is a case pending in federal court over an alleged warrantless search of the smartphones of 11 plaintiffs, many of them U.S. citizens. All travelers should assess their own risks, including immigration status, travel history and data stored on the device before they decide how to best to proceed.

In addition, it is being reported that the Administration is looking at creating an "extreme vetting" system that would:

- Enhance collection and review of biometric and biographical data
- Improve intelligence streams
- Improve documentation requirements and verification
- Improve information sharing with partner nations, foreign law enforcement and intelligence services
- Provide a more thorough review procedure for Customs and Border Patrol and other related agencies of foreign nationals

The Administration has also asked private sector technology companies to help build an advanced computer system to that would help our government "determine and evaluate an applicant's probability of becoming a positive contributing member of society, as well as their ability to contribute to national interests" and predict "whether an applicant intends to commit criminal or terrorist acts after entering the United States." Experts in the technology field allege that such a system has no computational methods that can provide reliable or objective assessments of the traits that government seeks to measure; and that any algorithm created relying on subjective data collected is biased and flawed. Therefore, it is uncertain if this new "extreme vetting" system will be developed in 2018. However, it is reported that expanded biometric screening could be included in upcoming legislation related to DACA.

While the Administration insists that biometrics collection can be used effectively for border security, to verify employment, to identify criminals and to combat terrorism, the privacy risks that accompany biometric databases may be deemed too extreme. Many of the biometric programs now are limited to international travel, but it is reported that DHS is already looking to expand its program to cover domestic flights as well.

REAL ID ACT

The REAL ID Act, which was passed by Congress in 2005, set minimum-security standards for how states issue identification and how that identification would be used. Previously, people could travel within the U.S. and its territories with only a driver's license or state-issued identification

card. However, the new rule requires travelers to have an ID that meets REAL ID standards. The Act requires that all states and U.S. territories issue enhanced driver's licenses (EDL), which typically means that the state has reviewed and stored proof of your identity and lawful status in the U.S. Each of these EDLs will have a radio frequency identification chip (RFID) that will signal a secure system to pull up your biographic and biometric data and a machine readable zone (MRZ) or barcode that can read electronically if RFID is not available. The REAL ID Act allows compliant states to issue driver's licenses and identification cards where the identity and lawful presence in the U.S. is determined. In addition, states may issue temporary (or limited-term), REAL ID-compliant driver's licenses and ID cards to applicants who provide valid, documentary evidence of their temporary status in the U.S. Compliant states may also continue to issue noncompliant licenses and IDs to individuals with or without lawful status, including deferred action, as defined under the REAL ID Act.

The initial phases of the Real ID Act, which consisted of compliant identification to access secured federal facilities and military bases, have already gone into effect. The final phase of this initiative, phase 4, is underway now. That means a driver's license or identification card from a non-compliant state may only be used in conjunction with a second alternative form of ID for boarding federally regulated commercial aircraft. To date, 27 states are compliant under the Act, and 24 states (including Massachusetts and New York) plus Guam, Puerto Rico and the Virgin Islands are currently under an extension period that ends October 10, 2018. If you live in Massachusetts, you will be able to apply for and obtain a REAL ID driver's license starting March 26, 2018. For more details, see here. For a complete list of compliant/non-compliant states, see here.

2018 Changes: Starting January 22, 2018, air travelers who reside in states that are ***not*** compliant with the REAL ID Act or have ***not*** been granted an extension for implementation will need an alternative identification other than a driver's license to pass through TSA security check points at the airport. Here is a list of alternative identification documents that the TSA will accept. At this point, the majority of states have driver's licenses that are compliant or have received extensions from the federal government. If your driver's license or state identification card has been issued by a state that is compliant with REAL ID or a state that has been granted an extension, you will be able to use that driver's licenses or state identification card for all domestic flights.

By October 1, 2020, all air travelers will be required to have a REAL ID compliant driver's license or credential or an alternate identification to fly domestically. DHS has designed other acceptable IDs including, U.S. passport, border ID card, a trusted traveler card such as Global Entry, permanent resident card, and other.

We recommend that air travelers check the DHS REAL ID Act for information to determine if you need to use other accepted IDs for air travel domestically.

Note that REAL ID does not apply to the following:

- Entering federal facilities that do not require a person to present identification
- Voting or registering to vote
- Applying for or receiving federal benefits
- Accessing health or life preserving services (including hospitals and health clinics), law enforcement or constitutionally protected activities (including a defendant's access to court proceedings)
- Participating in law enforcement proceedings or investigations

WILL YOUR H-4 SPOUSE CONTINUE TO BE WORK AUTHORIZED?

Brief History: DHS plans to pursue the termination of Obama-era rule that allowed work authorization for certain spouses of H-1B visa workers who were in a backlog for years while in process to obtain lawful permanent resident status in the U.S. DHS plans to issue a new proposed regulation in February 2018 to rescind the H-4 spousal work authorization. DHS stated this in a motion filed with the U.S. Court of Appeals for the District of Columbia in December 2017. The court was hearing an appeal in the case of *Save Jobs USA v. DHS*, a lawsuit brought by a group of US technology workers challenging the H-4 EAD rule. The lawsuit was dismissed, but the plaintiffs are seeking an appeal. DHS asked the court to place the appeal on hold for another six months (this is DHS' fourth extension request) while it considers its position on the regulation. The court will need to decide whether to proceed and hear the merits of the case or hold the litigation in abeyance as requested. It appears there is no set timeline for the court to rule on the motion.

2018 Changes: Despite what the court decides, it appears that DHS will move forward with publishing new regulations as planned next month. If the rule is rescinded, it can potentially prevent thousands of H-4 spouses from working in the U.S. According the USCIS data, it approved 26,858 employment authorization documents for H-4 visa holders in fiscal year 2015, 41,526 in fiscal year 2016 and 36,366 from October 1, 2016 to June 29, 2017.

The 2015 regulation has not been modified or rescinded yet, and remains in effect at this time. Though the timing may change, proposal of an official H-4 rule is planned for the Federal Register by February 2018. That means the rule will likely go into effect this summer. What we do not know is whether DHS will allow current EADs to remain valid through their expiration, whether there will be a grace period during at which time H-4 EAD holders can renew their EADs as they phase out this program, or if H-4 EADs will be invalid the date the final rule is published. We will follow these developments.

WILL YOUR F-1 STEM GRAD CONTINUE TO BE WORK AUTHORIZED?

Brief History: On May 10, 2016, the final rule titled "Improving and Expanding Training Opportunities for F-1 Nonimmigrant Students with STEM Degrees and Cap-Gap Relief for All Eligible F-1 Students" went into effect. The regulation allows foreign students on F-1 visas with qualifying STEM degrees to extend their OPT work authorization for an additional 24 months beyond the initial one-year OPT period if they are employed with a E-verify employer. Students may also be eligible for one additional STEM extension if they obtain a second U.S. STEM degree at a higher level. The regulation also increased the DHS oversight of the STEM OPT program by requiring formal training plans by employers, adding wage and other protections for STEM OPT students and U.S. workers. In 2017, approximately 34,000 students were granted employment authorization under the STEM OPT program.

2018 Changes: USCIS is expected to issue a proposed rule some time in 2018 that may comprehensively reform the optional practical training (OPT) program for foreign students. Reportedly, the rule will seeks to reduce fraud and improve the protection of U.S. workers who may be negatively impacted by employment of foreign students. The Administration, as part of its national security strategy, may also place limit and restrictions of STEM students from certain designated countries. It appears that the Administration is looking to place restrictions on the program rather than rescinding it for now. The reforms contemplated would likely need to proceed through proposed rulemaking, and therefore, will take time to be effective.

In addition, opponents like Washington Alliance of Technology Workers (WashTech), filed multiple lawsuits against DHS challenging the STEM OPT regulations for a number of years. The Obama Administration had successfully defended the regulation, but the case remains ongoing in the U.S. Court of Appeals for the D.C. Circuit. It is unclear exactly when we will see any changes to the program.

WILL YOUR DACA EMPLOYEE CONTINUE TO BE ABLE TO WORK?

Brief History: On June 15, 2012, President Obama issued the DACA executive order that allowed young undocumented immigrants to remain legally in the country to attend school and work. Deferred action did not grant the applicants a lawful status, but it was the use of DHS' prosecutorial discretion to defer removal action against an individual for a certain period of time.

On September 5, 2017, President Trump rescinded the DACA program while giving Congress a six-month window to save the policy. USCIS immediately stopped considering new applications for DACA, but allowed any DACA recipients who had an EAD set to expire before March 5, 2018 the opportunity to apply for a two-year renewal before October 5, 2017. Click here to read more.

2018 Changes: On January 9, 2018, a U.S. District Judge in California temporary blocked the Administration's September rescission of the DACA program until legal challenges to end the program are resolved. The Judge concluded that the plaintiffs were likely to prevail on their claim

that the decision to rescind DACA was "arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law," and that DACA recipients would suffer "serious irreparable harm" if the program were allowed to expire before litigation over the Administration's decision is resolved. The ruling stated that the DHS must "maintain the DACA program on a nationwide basis on the same terms and conditions" as those that were in place before it was rescinded. That means that DACA recipients can continue to renew their enrollments, but the government is not required to accept any new DACA enrollees. USCIS has confirmed that it has resumed accepting requests to renew a grant of deferred action under DACA for those who were previously granted benefits that expired on September 5, 2017. See here for more details.

While the DACA litigation in and out of court is playing out, Congress continues to debate a more permanent solution as part of their budget negotiations. It appears that for now, those who have previously been a DACA recipient prior to the Administration's September 5, 2017 rescission, can apply to renew or obtain an employment authorization document (EADs). Those with an expiring EAD are urged to apply now, while the window remains open.

A RAMP UP OF IMMIGRATION WORKSITE ENFORCEMENT IN 2018

DHS appears to be methodically increasing investigations to ensure compliance with the priorities outlined in President Trump's executive orders. In October of 2017, the acting Immigration and Customs Enforcement ("ICE") Director indicated that he instructed the Homeland Security Investigations ("HSI") unit, the investigative unit of ICE, to significantly increase. HSI will potentially quadruple the number of worksite enforcement actions over the next year. It is expected that HSI will initially target industries that have a history of not complying with I-9 employment eligibility verification requirements. As part of the employer's I-9 audit, ICE will arrest unauthorized workers who are found as a part of that investigation. This type of coordination has not happened in the past.

Under the current USCIS Site Visit program, immigration officers make unannounced visits to collect information as part of a compliance review of H-1B, L-1A, L-1B and other non-immigrant visa petitions that employers have filed. In October 2017, the DHS Inspector General conducted a review of the Site Visit program. It concluded that the current program provides "minimal assurance that H-1B visa participants are compliant and not engaged in fraudulent activity." It is recommend that the agency enhance its site visit activity and develop a more comprehensive policy agency-wide to ensure effective site visits and action. Because of the Site Visit review, last month employers began to see an increase in site visits for H-1Bs working at third-party work sites. USCIS will continue to change and enhance this site visit program to prioritize fraud review and the protection of U.S. workers.

Employers should also look out for an increase in investigations from the U.S. Department of Justice ("DOJ"), the U.S. Department of Labor ("DOL"), Wage and Hour Division and the U.S. Department of

State ("DOS"). Each of these agencies manage an aspect of immigration policy. The increased investigations with these agencies will have an eye toward protecting the economic interests of U.S. workers and ensuring current immigration programs are not abused.

Because employers now have an increased chance of being audited or investigated by DHS, DOL and DOS, it is increasingly important to make sure employers review their internal immigration compliance programs. Employers should make sure that:

- I-9 forms are correctly completed
- They conduct periodic internal I-9 audits to ensure that each employee has a Form I-9, and that it was prepared accurately and on the correct version of Form I-9
- If a company employs H-1B, it should make sure their public access files are in good order
- They have a lawful system for allocated wages to all workers, including those on visas
- If they had a lay off and has filed permanent resident filings for foreign nationals, it should make sure copious records are kept of the occupational categories that were affected by the lay off
- They have a process and procedure set up for when an investigator shows up to review immigration records. In some states, like California, there are specific rules around where an investigator can be, whom they can talk with and what documents can be shared
- They consider providing refresher training to Human Resource professionals and other managers responsible for immigration compliance (this is highly complex body of the law, with both civil and criminal penalties)

Foley Hoag can certainly assist with this.

CONCLUSION

With all of the above changes, DHS is also reviewing USCIS filing fees and may be proposing new fee increases. It is reported that the new Student and Exchange Visitor Program fees will be proposed in April 2018, and the new petition/application fee for all other visa/case types will be in October 2018. U.S. Consulate fees are also being reviewed, but it is unclear when we will see the proposed changes for those.

The Administration's immigration policy focus in the last year has been on curtailing lawful and unlawful immigration and this will continue into 2018. The three emerging themes since the President Trump took office seem to be:

- Increased scrutiny for all types of visa petitions
- Greater enforcement

- Rescinding any and all Obama-era immigration executive orders, regulations, programs and guidance

It appears what we will see is some combination of rulemaking, policy memoranda and operational changes in line with the President's executive orders. It remains unclear whether Congress will act on a broader overhaul of the U.S. immigration system. What seems clear is that with such changes, there will be increased litigation over DHS decision making.