IMMIGRATION UPDATE:

REALITY, RUMORS & RESOURCES

Presented by:

Steven Williams, Attorney
WHAT IMMIGRATION MEANS TO COLORADO

537,066 immigrants make up 9.8% of the state’s population.
Immigrant entrepreneurs invigorate the economy

One in 10 self-employed business owners in Colorado is an immigrant.

$825,900,000
the total annual revenue generated by these immigrant-owned businesses.

Immigrants are an integral part of communities

38.7%
Nearly two-fifths of all immigrants in Colorado are naturalized U.S. citizens.

72.6%
More than 7 in 10 of immigrants in Colorado speak English “well” or “very well.”
Immigrant households strengthen the economy

- $10,800,000,000 in spending power.
- $2,300,000,000 in federal taxes.
- $1,000,000,000 in state and local taxes.
Immigrants are essential to the labor force

One in nine workers in the Colorado labor force is an immigrant.

Over one-fifth of all workers in Colorado's construction industry are immigrants.

The largest shares of immigrants in Colorado’s labor force work in the following occupations:

- Building and Grounds Cleaning and Maintenance: 31.9%
- Construction and Extraction: 27.5%
- Farming, Fishing, and Forestry: 22.6%
Summary

1. General Trends
   1. International Travel
   2. Enforcement Actions
   3. Public Charge Rule

2. Affected Populations
   1. Employees/ers
   2. F-1 Students
   3. Refugees & Asylees
   4. The Undocumented

3. Resources
   1. Professional Organizations
   2. Legal Experts
   3. Government Sources
International Travel

- Travel Ban
- Administrative Processing
- Visa Denials
Travel Ban

- Prevents **issuance** of temporary and permanent visas
  - Country-by-country exceptions for student visas

- Doesn’t apply to current visa holders

- Waivers available
  - Only 6% of applicants granted
Administrative Processing and “Extreme Vetting”

• Very little insight into process – the “Black Box” of immigration
• Applies for applicants for visa stamps (allows for entry to U.S.)—usually for background checks
  • Must now provide social media
  • Significant delays—3-4 months
• Significant increase in last 2 years
Visa Denials

Table 1: Visas Issued to Immigrants and Temporary Visa Holders

<table>
<thead>
<tr>
<th></th>
<th>FY 2017</th>
<th>FY 2018</th>
<th>Decline FY 2017 to FY 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Temporary (Nonimmigrant) Visas Issued</td>
<td>9,681,913</td>
<td>9,028,026</td>
<td>-653,887 (-7%)</td>
</tr>
<tr>
<td>Immigrant Visas Issued</td>
<td>559,536</td>
<td>533,557</td>
<td>-25,979 (-5%)</td>
</tr>
</tbody>
</table>

Source: U.S. Department of State, National Foundation for American Policy.

Table 2: Visa Refusals (Ineligibility Findings) for Immigrants and Temporary Visas

<table>
<thead>
<tr>
<th></th>
<th>FY 2017</th>
<th>FY 2018</th>
<th>Increase FY 2017 to FY 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Number of Ineligibility Findings for Immigrants</td>
<td>332,003</td>
<td>460,840</td>
<td>128,837 (+39%)</td>
</tr>
<tr>
<td>Total Number of Ineligibility Findings for Temporary Visas (Nonimmigrants)</td>
<td>3,516,581</td>
<td>3,706,541</td>
<td>189,960 (+5%)</td>
</tr>
</tbody>
</table>

Enforcement Actions

- Large-Scale Enforcement
- STEM OPT Worksite Visits
Increase in ICE Enforcement

- Fiscal Year 2018 (FY 2017)
  - 6,848 worksite investigations (1,691)
  - 5,981 I-9 audits (1,360)
  - 779 criminal worksite-related arrests (139)
  - 1,525 administrative worksite-related arrests (172)

- 300% to 750% increase year over year
Renewed Focus on STEM OPT F-1 Students

• STEM OPT designed for **training**
• Reviewing I-983 training plan
  • Detail in training plan
  • Training update schedule
  • Update employers/positions
  • Report end of employment
Public Charge Rule

- Effective October 15, 2019
Public Charge Grounds of Inadmissibility

• Ineligible for green card or temporary visas
• Definition: Receives one or more public benefits (Social Security, TANF, Cash Assistance, Medicaid, SNAP, institutionalization, Section 8, public housing) for more than 12 months in aggregate within 36-month period.
  • Receipt of two benefits in one month counts as two months
Public Charge Exceptions

• Exceptions:
  • Medicaid for pregnant women (60 days post-partum);
  • children under 21;
  • school lunch;
  • emergency medical care;
  • U.S. Military and family;
  • refugees;
  • asylees.

• Burden is on applicant to show have not used public benefits
Legal Challenges

• A growing number of cities and states have joined in multiple lawsuits against the Administration

• Purportedly violates Equal Protection Clause:
  • 14th amendment: “nor shall any State [...] deny to any person within its jurisdiction the equal protection of the laws.”
Affected Populations
F-1 Students

- Unlawful Presence Memo
- CPT and Maintenance of Status
- Processing Delays for EADs
Unlawful Presence Memo

• August 9, 2018: New Policy
  • ULP accrues the day after a status violation, if occurs after 8/9/2018
  • ULP not counted during reinstatement request
  • ULP > 180 days = 3 year bar
  • ULP > 365 days = 10 year bar

• May 3, 2019: U.S. District court issued nationwide preliminary injunction temporarily preventing implementation of memo
Curricular Practical Training Scrutiny

- CPT:
  - “Integral part of established curriculum” (required or receive credit)
  - Must maintain F-1 status
  - Normally can begin after one academic year
  - Exception if required to start immediately by program

- Under scrutiny:
  - Same-level, day one CPT
  - CPT/OPT over 12 months
  - Maintain careful documentation!
Processing Delays

- For OPT, must apply for EAD
- Processing times now up to 5 months
- Interrupts employer training schedules and onboarding for new graduates, and hardship on students without ability to work
Employees/ers

- The Rise of the RFEs
- H-4 EAD Saga
- H-1B Pre-Registration and Lottery
- Green Card Backlogs
The Rise of the RFEs

% of Completions with RFE

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>% of Completions with RFE</th>
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<tbody>
<tr>
<td>FY 2015</td>
<td>22.3</td>
</tr>
<tr>
<td>FY 2016</td>
<td>20.8</td>
</tr>
<tr>
<td>FY 2017</td>
<td>21.4</td>
</tr>
<tr>
<td>FY 2018</td>
<td>38</td>
</tr>
<tr>
<td>FY 2019</td>
<td>48</td>
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Approval %

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Approval %</th>
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<tbody>
<tr>
<td>FY 2015</td>
<td>95.7</td>
</tr>
<tr>
<td>FY 2016</td>
<td>93.9</td>
</tr>
<tr>
<td>FY 2017</td>
<td>92.6</td>
</tr>
<tr>
<td>FY 2018</td>
<td>84.5</td>
</tr>
<tr>
<td>FY 2019</td>
<td>79.4</td>
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Approval % of Petitions with RFE

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<th>Fiscal Year</th>
<th>Approval % of Petitions with RFE</th>
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<tbody>
<tr>
<td>FY 2015</td>
<td>83.2</td>
</tr>
<tr>
<td>FY 2016</td>
<td>78.9</td>
</tr>
<tr>
<td>FY 2017</td>
<td>73.6</td>
</tr>
<tr>
<td>FY 2018</td>
<td>62.3</td>
</tr>
<tr>
<td>FY 2019</td>
<td>60.5</td>
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Buy American, Hire American

• Directs federal agencies to propose reforms to ensure visas are awarded to “the most-skilled or highest-paid petition beneficiaries”

• DOL, DOJ, USCIS applying greater scrutiny

• Key impacts (not already mentioned):
  • Rescission of the 2004 “Deference” Policy for extensions
  • Employment-Based Green Card Interviews
H-4 Employment Authorization Saga

• Work authorization for spouses of H-1B visa holders who have completed Step 2 of green card process
• Announced intention to rescind in 2017
• Ongoing court case to challenge regulations to allow for H-4 EADs
  • September 16, 2019 letter
• Spring 2020 is latest timeline for new rule
H-1B Pre-Registration and Lottery Changes

• H-1B pre-registration will cost $10
• Allows for running of H-1B lottery with minimal up-front information
  • 85,000 slots for 200,000+ applicants
• No visibility into process/portal yet
• Lottery now reversed—increases chances for those with U.S. Master’s degree by 15% over those without
Green Card Backlogs

• Significant delays for employment-based green cards for India and China

• Proposed legislation would remove per-country limitations, but most proposals would not increase total allowance (all subject to backlogs)

• Even “extraordinary ability” petitions are backlogged for all countries, and 3-5 year wait for India and China
Refugees & Asylees

- Restrictions on Third-Country Applications
- Reduction of Refugee Admissions
- Increasingly Stringent Standards
No Third-Country Asylum Applicants

- **July 15, 2019**: Policy announced
  - “Bars eligibility for asylum for an alien who enters or attempts to enter the U.S. across the southern border, but who did not apply for asylum where it was available in at least one third country outside country of citizenship, nationality, or last lawful habitual residence through which he or she transited en route to the United States”

- **July 24, 2019**: Nationwide preliminary injunction barring application of policy (district court in 9th Circuit)

- **September 9, 2019**: Supreme Court stays injunction (rule goes into effect)
Reduction of Refugee Admissions

• Proposal for FY2020 is: 0 refugee admissions

Refugee admissions plummet: President Trump slashed the number of refugees admitted to the U.S. in 2017

SOURCE U.S. State Department; Data from Jan. 20 to Dec. 31 of each year
George Petras/USA TODAY
Stricter Standards for Asylum

- Unable or unwilling to return to home country because of *persecution* or a *well-founded fear of persecution* on account of:
  - Race
  - Religion
  - Nationality
  - Membership in a Particular Social Group
  - Political Opinion
Stricter Standards for Asylum

• Examples of AG self-referred cases:

  • 7/29/2019: fear based on threats against family members no longer eligible

  • 4/16/2019: asylum seekers, who clear CFI, no longer eligible for bond

  • 6/11/2018: victims of domestic abuse and gang violence no longer qualify
The Undocumented

- DACA Update
The DACA Roller Coaster

• Attempted to rescind by Executive Order
• Multitudinous ongoing litigation—
• 6/28/2019: Supreme Court granted certiorari

• Current situation:
  • USCIS is accepting DACA renewal requests, for individuals already granted DACA
  • However, USCIS will not accept or approve advance parole requests from DACA recipients
  • USCIS is not accepting new requests from individuals who have never before been granted deferred action under DACA
Resources
Professional and Non-Profit Organizations
Professional Organizations

• AILA
  • American Immigration Lawyers Association

• NAFSA
  • National Association of Foreign Student Advisors

• NACUA
  • National Association of College and University Attorneys

• SHRM
  • Society for Human Resource Management
Non-Profit Organizations

• International Rescue Committee
  • Refugees, Asylees, Resettlement

• RMIAN
  • Detained and children immigration representation

• Casa de Paz
  • Assistance upon release from detention

• American Immigration Council
  • Information, research, and advocacy
Government Sources
Directly to the Source

- Legislation
- Regulations
- Policy Memorandum
- Adjudicators Field Manuals
- Court Cases
  - Immigration Court
  - Federal Courts
- Executive Orders
Timeline of Federal Government Changes

- **Executive Orders**
  - Can be done very quickly and unilaterally

- **Policy Guidance**
  - Can start to be implemented without a formal process

- **Regulations**
  - Must follow formal rulemaking process (APA)

- **Legislation**
  - Requires congressional action – (legislative process often slow, messy, and drawn out)

Court cases?
Legal Experts

- International Student Offices
- Law Firm Blogs/Updates
- Individualized consultations
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