

Policy Matters Podcast - The Immigration Lens, Episode #5: Travel, Visas, and Re-entry

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Mahsa Aliaskari

Welcome to The Immigration Lens, where we explore the impact of immigration policies, individuals, institutions, and businesses. My name is Mahsa Aliaskari. I am co-chair of the Seyfarth Global Immigration and Mobility Team, and I'm excited to be your host today. We have a special guest with us today, Jake Campbell, Senior Counsel at Seyfarth, who has extensive experience and insights on guiding clients through both consular processing and ports of entry challenges. Jake, welcome.

Jake Campbell

Thanks, Mahsa. I'm thrilled to be here and look forward to sharing some insights with our listeners.

Mahsa Aliaskari

Wonderful. So in our conversation today, we will be following a recent update on our immigration blog that highlights recent changes in relation to visas, consular processing, what's happening at the ports of entry when being admitted. So those include breaking down the state departments, new visa interview waiver limits that have been announced, as well as challenges they're facing at US ports of entries, documents they're being asked to present, or request to access devices that people are carrying with them. Jake, can you give us a brief overview of these topics and why they're important?

Jake Campbell

Absolutely. So first we have a blog that deals with recent State Department changes to visa interview waiver limits, explaining which applicants can bypass in-person interviews and under what conditions. It's important because it impacts how quickly applicants can secure a visa appointment, especially in countries with backlogs at consular posts and how to plan ahead. We are also going to discuss challenges at ports of entry that you mentioned. There are numerous reports on challenges, lawful permanent residents and people on work visas are facing when they enter the US and we will be covering some helpful tips for travelers.

Mahsa Aliaskari

Great. So let's turn to the state departments' new visa interview waiver limits. From what I've seen, these changes modify eligibility thresholds for skipping that in-person interview at the US consulate altogether. Why is this so significant? Who is it impacting?

Jake Campbell

Absolutely. So this is significant because it changes the timeline for many applicants. For certain renewals or low risk applicants, skipping the interview saves time and resources, but now with tightened or change limits on who qualifies, some individuals who previously could waive an interview might have to schedule an in-person interview, and so therefore we're expecting longer waiting periods to obtain visa appointments, especially in high volume countries like India, Mexico, and China. The biggest tightening or change limit was the US Department of State changed the ability to go from an interview waiver where if the visa expired or was valid within the last 48 months, plus some other criteria, then they could receive an interview waiver, but that has changed to only where the visa has expired within the last 12 months. So it's a really significant restriction that's going to majorly impact visa wait times.

Mahsa Aliaskari

Right. So a lot of to think about and we've always advised folks to plan ahead and as far ahead as you can, especially if you're having to go in to get a visa stamp at a U.S. consulate to be able to return. So you really need to keep these things in mind if you have gotten used to having the waiver available of the interview, that kind of helped expedite things that might be limited or no longer available to you. And then once you attend your interview and obtain your passport and visa stamp and you're entering the country, we can, you know, let's pivot and Jake, let's talk a little bit about entry experiences. They definitely vary widely depending on whether you're traveling by air, if you're crossing a land border where in the country you're coming in and out of. And we're also hearing of a lot of recent trends in terms of scrutiny in various categories for both visitors as well as folks coming in on a work authorized visa status. Jake, talk to us about the top three port of entry tips you'd offer to individuals right now entering the US in a work visa status or a student visa status, for example.

Jake Campbell

Absolutely. So the first thing that I would advise folks on is you need to carry proper documentation. You always want to have your passport, of course, and you want to make sure that depending on your nationality, because some countries we require that passport to be valid for at least six months at the time of entry. For students this would include having a recently dated I-20 or DS-2019 for J-1 holders, and if they are working the latest EAD and pay stubs. For H-1B or L-1 visa holders, they want to have some type of verification of their job offer or recent employment confirmation letter pay stubs as well, of course, their recent approval notice. And of course you want to make sure that all of those documents are recently dated and for your passport, of course, your visa and approval notices, you want to make sure that those are valid at the time of your entry. The second thing to keep in mind is that you want to be consistent in your answers. So we have officers that we're seeing that are going back to visa applications and making sure that what you said in your visa application is consistent with the present date, And that's even happening with the USCIS filings. But in connection with an entry or admission to the United States, you just want to make sure that everything that you're saying to that officer, as well as anything that you said before to a government official was correct because inconsistencies can trigger additional

questioning, denial of entry, and even removal from the US, which carries a significant penalty to and ability to come back to the United States. Also, finally, you want to be prepared for a secondary inspection. This is where when you initially see a an officer at the airport or with immigration, and then you go to another location where it can take a long time, maybe sometimes several hours for you to go through that additional processing. Certain profiles, especially if there are changes in personal circumstances such as a marriage, right, if your passport has your previous name, gender markers, and potentially even different nationalities, it may face secondary inspection. You really want to remain calm. You want to remain polite as well as cooperative and always request an interpreter if it's needed, and if you can't understand the questions that are being asked from you. And then finally with respect to secondary inspection, because we're seeing it happen at an increasing level, you want to plan ahead as well. So if you've had any layovers you want to make sure that you have at least a couple of hours to get through immigration or processing, including secondary inspection for you to make the next flight.

Mahsa Aliaskari

Thanks, Jake. Really all very helpful to keep in mind as you're entering the country at the port of entry. Are there any special considerations for those who are worried about some of the new policies or increased scrutiny that we're hearing about?

Jake Campbell

Absolutely. The big thing to keep in mind is that these Customs and Border protection officers, they're really making sure that folks, depending on your visa classification or if you're coming on ESTA or the visa waiver program that you're being compliant with the terms of that visa. So you should anticipate questions concerning how compliant you are with the visa program on which you're entering. So for example, if you're entering on a B-1 or ESTA, you should anticipate questions on of course, how long you'll be here, how you can pay for the trip, and showing ties to your home country because you have to maintain a residence abroad. If you're on a work visa, you should anticipate questions about your job and employment, and making sure that what it was last stated to either USCIS, CBP, or even Department of State, is still accurate based at the time of your entry. You also, just like I said before, you want to stay calm and truthful. CBP has special training to identify people who are nervous or if their demeanor is off. So just be calm and always be truthful. The next thing here is it's really a major topic that we're seeing significant reports on, and this is for in connection with phone, social media, and anything on your person when you're entering at a port of entry is fair game. Right, so CBP at a port of entry can confiscate your phone, review your social media, and really anything on you. And when entering the US, anything is searchable, so CBP does not need a warrant to search your phone when you're seeking entry at a US port of entry. So you just want to make sure and review anything and make sure that what you've said either on social media, is consistent with what you're doing in the United States. The last couple of things I wanted to mention are talk to your immigration attorney. There's a lot going on right now and we are here to address any travel concerns, what documents you should bring when you enter the US, so keep us updated and we can

always advise you on what is happening. And then finally, just stay informed with real time updates. So subscribe to your alerts from the consulate your employer's immigration attorney, or your school's international office, because they're often the closest to what's happening on the ground and can keep you updated on the latest and greatest.

Mahsa Aliaskari

Right. And to circle back a little bit on the note regarding phones, social media, and anything on your person - So just to really reiterate, customs officers do have wide latitude to search your possessions when you're entering the US. In some countries this is also done before you even board the flight. That's always been the case. The searches can extend to electronic devices, so including your smartphones, laptops, tablets, etc. Recommendation really is to cooperate with the searches as directed by the customs officers in general, including to responding to any questions that are consistent with what Jake has talked through already in terms of as you're answering the questions about your entry and your intentions when you're entering the country. Note that because you're being admitted in a temporary status, if you are refusing to provide the devices or access to the devices, the failure to cooperate could mean that you're not admitted into the country, so it's one thing to consider as you're making those decisions. If you're carrying company devices, your company laptop, company phone, make sure you're aware of your company's policies and expectations when you're traveling with company issued devices and access to those devices as well. So all things to start, make sure that you're following up on or reading up again on policies especially related to company devices. So, Jake, let's move on and kind of talk through a couple of practical scenarios and hypotheticals. So let's say you have someone who used to qualify for an interview waiver, what we discussed at the beginning, at the US Consulate, but now they're required to attend in person for the visa stamping. They have a short time before their planned travel date. What's your best advice?

Jake Campbell

The first thing I would say is sign up for the first appointment that works for you, and then check every single day and you could find something, an appointment that shows up randomly. It could be a day or two in advance. We see a lot of cancellations. To see appointments that the consulate will just open up in a couple of days, so check each day. Keep in mind that a lot of consulates, if you change they won't allow you to change your appointment more than three times. Now if you do not find an appointment that works through your travel, you still have a couple of options. The first one is check for expedited appointments. So some consulates allow for expedited interviews. If there's an urgent need, think a significant business loss or a humanitarian reason, and you can always check with your attorney if there truly is a time crunch and your travel is urgent, we can often help with the expedited appointment and see if that is a viable option for you. The other that is becoming increasing, it's increasing in my practice, but it's questions on whether a person can apply as a third country national. So that means that if they don't have the nationality of the country where they're applying, think if the person is from the UK and then they apply in the Bahamas, right, that they don't have

that nationality to apply in the Bahamas, but we are seeing that third country nationals can apply in different countries and this is an option for a lot of folks. There are certain countries that just do not permit third country national applications, there are also countries that don't permit certain visa classifications as third country nationals, so you always want to check with that individual consulate to make sure that you can apply as a third country national. And then if you do apply as a third country national, you want to make sure that you have the appropriate travel document to get in that country, and that you have enough time on that status to obtain your visa stamp. So some countries will only give you 14 days to stay in that country. But what happens if the visa is taking, you know, maybe more than 14 days. So that's a consideration that you want to incorporate into that decision process.

Mahsa Aliaskari

Right. And I'll just, a couple of call outs here. In terms of your advice on schedule the appointment that's available and then check regularly for new ones that open up, they often open up because of others canceling. And this may require you to check every day or multiple times a day. I know I had one client who paid his 16 year old kid to sit there online and continuously check and it paid off because he was able to move up his date significantly. So there are ways to do that obviously. And then the other call out I wanted to make in terms of considering going in as a third country national, remember that it's discretionary for that consulate, so, to Jake's point, not just about are you allowed to stay there for the period that you need to while you're waiting for the visa processing, but even if that consulate for some reason, decides they're not comfortable issuing the visa stamp and doesn't do it, then you have to also be prepared to go back to your home country and process through there if you don't have a visa stamp to be able to come back in because yours has already expired and definitely this particular one, I would highly encourage you to connect with your immigration counsel because there are trends there too where we see consulates noticing forum shopping where all of a sudden they get a flood of all these third country nationals and then they stop accepting them or changing their appointments. So just be aware of that. It definitely is a strategy that does work but you just want to be careful with it. So Jake let's discuss another hypothetical. Say we have someone who's on H1B whose visa stamp has expired, but they're, but they're traveling to US territory like Puerto Rico. What should we be thinking about there?

Jake Campbell

So individuals who are here on some type of visa can travel from the mainland US to Puerto Rico or another territory like the US Virgin Islands, and they don't need a valid visa stamp, right, because it's from the US to the United States so they don't go through immigration. They do want to make sure, of course, you have valid status, but generally they're not going to go through an immigration or Customs and Border protection because it's from a US territory to another. Now, unless there's an international layover, that's the assumption is that you won't go through US Customs. Now, the thing that I think a lot of people don't understand or may not consider is that there's a special regulation that allows Customs and Border protection in Puerto Rico, US Virgin Islands,

Guam, and the Northern Mariana Islands, they can actually inspect and assess one's admissibility. This means that whether they can come back to the United States even though they are technically still in the United States. And so this means that if you have been in the United States for maybe a long time, but you initially entered without inspection of what we call an EWI. This can constitute grounds for CBP to get those people to ICE and then start removal proceedings immediately. The same applies to someone with a criminal issue that may make them inadmissible, or someone who has maybe even overstayed in the United States and doesn't have valid visa and status documents.

Mahsa Aliaskari

So, once again, tricky situation there because when I'm asked the question I'm like well, of course not. Puerto Rico is considered international travel, but there's a caveat there, right? It does still -CBP still has that discretion and can actually look at your admissibility, so be mindful of that. Jake, one last hypothetical as we round out our session today. Let's say we have a lawful permanent resident green card holder, and they've been outside of the US for more than six months and they're coming back. What should they be thinking about?

Jake Campbell

You need to talk to an immigration attorney. So we're seeing a really, an ever increasing and changing environment. And we're seeing that environment where we're experiencing just more scrutiny, like you mentioned, Mahsa. And so in this hypothetical, the law states that if a lawful permanent resident or green card holder has stayed abroad for more than six months that then less than a year the government may actually find that you abandoned your permanent residency. Now, if they stay longer than a year, there is a presumption that they have actually abandoned their permanent residency, and that can be extremely difficult to overcome. The primary rule here is whether a green card holder has maintained sufficient ties to the United States, and that can depend on a variety of factors. Of course, how long they were abroad, as well as if they've been filing federal income tax returns in the United States, employment in the US, where their primary residence and work are. But if you have a potential trip that's more than six months and especially more than a year, you may want to consider filing a re-entry permit while in the US. A re-entry permit is essentially a document that informs USCIS, that says, "Hey, I'm telling you now that I'm intending to not abandon my permanent residency in case I have a significant trip". So that's something that you may want to consider if you're traveling for more than six months, definitely more than one year and maybe even if you have frequent trips outside of the United States, maybe every month or two, because we are experiencing, like I said, that additional scrutiny and there's a lot of discretion here. The other thing that you may want to consider is filing what's called an N-470 and that is an application that allows you to preserve your continuous residence, and that's a requirement if you seek to naturalize or become a citizen. It can be a little bit difficult to qualify for that in N-470, but I often find that when I review a citizenship or naturalization applicant or potential applicant, they have traveled more than six months or a year and they could have filed that N-470 to preserve their

residence, but they didn't. And so that's something that you really want to plan ahead and talk to an immigration attorney about. But just going back, if you are having extended trips abroad, talk to your immigration counsel because there's a lot of discretion and you really want to walk through what documents you should bring and any other considerations that that we can inform you of.

Mahsa Aliaskari

Right. All really important to remember and I know one of the trends we saw with the first Trump administration was individuals being asked at the admissions stage at the port of entry to relinquish their permanent residency. You're not required to do that. So just keep that in mind. If you're not sure, reach out to your immigration counsel if you are a green card holder and you have been outside of the US for a while and coming back in and talk through that with them so that you have an idea of what it means, what are your options when you're presented with that, what could it mean for you? But it's really helpful for you to kind of come to it with that knowledge so that you can remain calm and know what your rights are when you're there and you're being asked to do that. Jake, this has really been incredibly helpful. Any final thoughts or reminders for our listeners?

Jake Campbell

Sure. So the first thing is stay proactive. Changes in immigration policy are happening so quickly. Sometimes it's hard to keep up with all of the changing news. So stay connected to reliable news sources as well as legal guidance. Documentation is key, so double check the details in your forms and applications, especially in these heightened scrutiny periods. Make sure that what you've said in your last application or petition is truly correct and that it's consistent with what you're doing when you seek admission to the US. In addition, we're here, right, legal support is here. And don't hesitate to reach out to an immigration attorney if you sense a complication or if you're just nervous about something. Because if you are nervous, you're rightfully so, and you want to talk to an immigration council, just to make sure that all of your I's are dotted and your T's are crossed because prevention is much more efficient than crisis management.

Mahsa Aliaskari

Wonderful advice, Jake. Thanks again for your time. To our listeners, if you have questions or topics you'd like us to cover, feel free to reach out to us. Thank you so much for joining us today on The Immigration Lens.

Jake Campbell

Thank you, Mahsa. Always a pleasure to be here. I hope this information empowers our listeners to travel confidently as well as to navigate the immigration process smoothly.

Mahsa Aliaskari

Wonderful. That wraps up another episode of The Immigration Lens. Thanks all for tuning in and we'll see you soon. Bye everyone.

Jake Campbell

Buh-bye.