Portfolio Media. Inc. | 111 West 19th Street, 5th Floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Brexit And More: Topics Immigration Attys Are Talking About

By **Nicole Narea**

Law360 (June 8, 2018, 9:34 PM EDT) -- There have been several important developments in overseas immigration policy in recent months, from the unfolding details of the Brexit transition to reforms in Canada meant to attract high-skilled workers. Here, Law360 gets you up to speed on what immigration attorneys in multinational firms are watching.

Bracing for Brexit

As a result of discussions in December, the European Union and the U.K. preliminarily agreed that EU citizens residing in the U.K. would be able to apply for either "temporary status" or "settled status" after the U.K. officially leaves the EU in March 2019. EU nationals residing in the U.K. for less than five years would be able to apply for temporary status, while those residing in the U.K. for more than five years would be eligible for settled status.

While the specifics of the application process have not yet been released, Nicholas Hobson, a partner in Morgan Lewis & Bockius LLP's immigration and global mobility team, said that he has been advising both U.K. and EU companies to begin preparing for it in recent months.

Hobson said that EU nationals living in the U.K. for more than five years should apply for permanent residence. The U.K. government has said that it will automatically exchange permanent residence for settled status, meaning that they would be able to avoid processing delays. Alternatively, if the negotiations fail before the U.K. leaves the EU, those individuals can fall back on permanent residence as a form of work authorization.

Those who have not been in the U.K. for five years should at least start collating the necessary documents, Hobson said, noting that they will at some point have to apply for permission to remain there.

Meanwhile, employers should be identifying employees who are EU nationals, determine how long they have been in the U.K. and decide whether they will support employees in obtaining permanent residence by paying their application fees. They should also start gathering documentation, given that many EU nationals likely came to the U.K. before the Brexit vote and did not anticipate needing particular paperwork.

Worker-Friendly Reforms in Canada

Last June, the Canadian government introduced the so-called Global Skills Strategy program aiming to attract more foreign talent by providing fast-track visa options. Evan Green, managing partner of the Canadian immigration firm Green & Spiegel LLP, said his firm has been tackling the implementation of the program in recent months, with many of his clients in the information technology sector taking advantage of new immigration benefits.

Under the program, the Canadian government allows companies to bring in key personnel who can help firms scale up on an expedited basis. The candidates must earn over $80,000 and have an advanced degree or commensurate experience, and the companies must agree to a 24-month hiring quota.

Companies can also hire individuals in specific occupations, mostly IT professionals, so long as they are paying prevailing wage if they agree to skills training for their local Canadian workforce.

"In the U.S., people are scared that their employees will not be able to renew their status," he said. "Canada is creating a great opportunity for them where they can bring in key personnel. We are open for business."

Furthermore, the program allows multinational companies to transfer foreign employees to their Canadian offices in approximately two weeks. It also allows high-skilled individuals, such as consultants, to work in the country once a year for a period of up to 30 days or alternatively twice a year for periods of 15 days without a visa.

Human Rights Claims for Immigrant Entrepreneurs

The U.K. Court of Appeal in March suggested that noncitizens who run their own businesses can fight deportation with human rights arguments.

The immigrant petitioner in the case, Nigerian national Stanley Onwuje, arrived in the U.K. on a student visa in 2008 and started an employment agency catering to the health care sector. He sought to extend his legal status in 2014 as an entrepreneur, but U.K. authorities refused, saying he failed to prove that he had access to at least £200,000 ($267,900) to invest in the business.

Onwuje appealed that decision, conceding that while he did not have access to the required investment capital, he has a right to remain in the U.K. under Article 8 of the European Convention on Human Rights, which furnishes a right to respect for an individual's "private and family life, his home, and his correspondence," with some restrictions. If deported, he would lose his interest in his company and have to close shop, he argued.

A three-judge panel of the court of appeals ultimately ruled against Onwuje, finding that his particular business was not large enough to support his Article 8 claims — but acknowledged that others might be able to succeed in similar claims.

"I have no difficulty with the proposition that in some circumstances, an entrepreneur’s ownership of, and involvement in, his or her business may also be regarded as an aspect of their private life for the purpose of Article 8," the decision states. "There are certainly cases where the work that a person does can properly be described as integral to their 'physical and social identity' ... and a case where an individual has established a business in which he or she remains actively involved may well come into this category."

Susan Cohen, chair of Mintz Levin Cohn Ferris Glovsky and Popeo PC's immigration practice, said that using such a human rights argument in what would appear to be a routine business immigration case was a novel strategy. The court's decision is controversial because judges in the U.K. are concerned that the "floodgates are going to open," with a deluge of immigrants seeking relief on human rights claims, she said.

"This statement is significant as it opens up the door for others to try to use and expand on this human rights argument in addition to statute-based immigration arguments, in future immigration cases, when trying to protect and defend immigrants from removal from countries which are parties to the convention," Cohen said.

The case is Onwuje v. Secretary of State for the Home Department, case number C5/2016/0595, in the U.K. Court of Appeals.

--Editing by Philip Shea and Katherine Rautenberg.
