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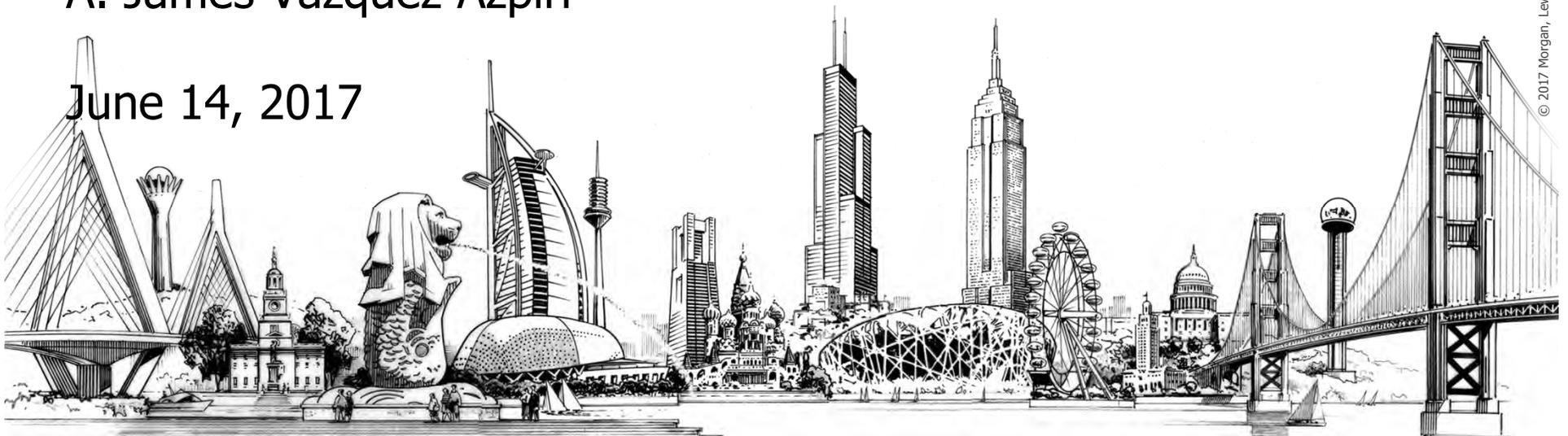
MOVING EMPLOYEES GLOBALLY: THE NEW REALITY

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CHALLENGES IN ENTRY AND ADMISSION TO THE UNITED STATES

Current Travel Environment

- Have to speak to US Customs and Border Protection (CBP) before entering the United States
- Heightened scrutiny, CBP exercising its discretion broadly
 - Reports of racial and religious profiling occurring at ports of entry
 - Reports of CBP canceling Global Entry status and ESTA approval for certain individuals, particularly those of Muslim heritage or with Muslim-sounding names
- CBP becoming extremely strict about business activities for which it believes work visas are required
 - Turning travelers back who attempt to enter as visitors for activities that CBP may consider “work,” or activities that may be in a gray area
 - Previously CBP may have admitted a traveler with a warning that the traveler must have the correct visa for the next entry
- CBP may choose between removing a traveler who does not have the appropriate documents for entry and allowing the traveler to withdraw his/her request for admission
 - Removal is a deportation and results in a ban on return
 - Withdrawal of request for admission allows for reentry with the appropriate paperwork
 - Entry under VWP (ESTA) allows expedited removal

Understanding When a B-1 Visitor Visa Is Not Sufficient

- Any productive employment performed in the United States that could be undertaken by a U.S. worker is considered “work” and generally requires a work visa
 - This is true even if the work is only for one day
 - Source of compensation is not determinative
- B-1 or ESTA for business is generally for business meetings, observation of business operations, conferences, and the like
- There are narrow exceptions for short-term professional assignments where compensation will continue to be paid abroad (B-1 in lieu of H-1B is increasingly disfavored)
- B-1 in lieu of H-3 for trainees is still possible, but hands-on employment is limited
 - J-1 is appropriate for hands-on learning for interns and trainees
- Be conservative in the current environment
- Be careful about repeated visits to the United States

Foreign National Travel to the United States

- No need to postpone or avoid international travel if not the foreign national of one of the six countries
- Be ready for delays in visa applications and on arrival in the United States – secondary inspection
- Be sure to have the valid passport, visa stamp, Form I-797, and letter confirming employment
- Secondary inspection if the foreign national of one of the six countries or have visited these countries
- Prohibition on laptops/iPads/tablets if traveling to United States from Casablanca, Istanbul, Cairo, Amman, Jeddah, Riyadh, Kuwait, Doha, Abu Dhabi, Dubai (United Kingdom has similar ban)
- Dual nationals should be prepared to travel into the United States on passport from the non-restricted country
 - Holders of multiple passports should present the passport that invites the least scrutiny
- Travelers should have appropriate contact information in their carry-ons in case of delays or detention
- Expect that social media accounts will be reviewed and scrutinized

Green Card Holders and US Citizens

- Lawful permanent residents should ensure that their passports and green cards are valid; any lengthy absence abroad warrants a “reentry permit” to facilitate return to the United States
- Lawful permanent residents should carry their green cards with them
- US citizens should be aware that CBP may ask them for certain personal information
 - US citizens are not required to provide ID except to CBP during the normal customs and immigration inspection
 - US citizens do not have to answer questions about political or religious affiliation at entry

Traveling with Electronic Devices

- CBP may request passwords to cell phones, laptops, and other devices from any traveler, including US citizens.
- Fourth Amendment rights during CBP inspection are limited.
- US citizens who refuse to provide passwords at entry may be delayed; foreign nationals who refuse may be turned around.
- To the extent possible, travel with a clean device or no device.
- If passwords are provided, change them immediately after entry.

TRIP Complaints

- TRIP = Traveler Redress Inquiry Program
- Any unduly harsh or inappropriate comments and/or treatment at entry may be brought to the attention of the port director for that port of entry and/or reported via the CBP's TRIP system:
 - <https://www.dhs.gov/dhs-trip>

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**US VISA APPLICATIONS AND
ENHANCED VETTING**

“Extreme Vetting”

- Along with the March 6 Executive Order (EO), President Trump issued a memorandum calling for “extreme vetting”
- Directed State Department and Department of Homeland Security (DHS) to implement enhanced screening and vetting protocols and procedures for granting visas, admitting foreign nationals into the United States, and granting immigration benefits
- Cable to all consular posts worldwide reminding consular staff that
 - “all visa decisions are national security decisions”
 - consular officers should not hesitate to refuse any case presenting security concerns
 - number of visa appointments should be reduced
 - greater discretion in ordering additional security checks beyond regular background checks
- New Form DS-5535 approved May 23
- Additional screening includes addresses and travel history over last 15 years, names of certain relatives, and all phone numbers, email addresses, and social media identifiers
- Expanded to include ideological questions
- Will likely cause delays in visa issuance worldwide
- We are already seeing increase in “administrative processing” and delays in obtaining appointments abroad

The Takeaways . . .

- The environment around travel and immigration to the United States has become highly restrictive in a very short period.
 - Applicants should expect to be questioned closely about all aspects of their visa applications.
- Applicants may be required to provide detailed information about their addresses and travel history over last 15 years, names of certain relatives, and all phone numbers, email addresses, and social media identifiers used in the last 5 years.
- Applicants should be prepared for the possibility of extra background and security checks, commonly known as “administrative processing.” These can add days or weeks to the process.
- New processes and limits on visa interviews will likely lead to longer waits for interview appointments and longer waits for passports with visas to be returned after the interviews.
- Business visits to the United States should be approached more carefully and deliberately.
- Applications and petitions for work visas must be well prepared and eligibility for the category should be extremely well documented to avoid RFEs and denials.
- Companies that are eligible should explore blanket L and E visa registration for the transfer of key employees.
 - New hires of foreign nationals, such as foreign students with H-1B status, will be increasingly challenging.

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UK IMMIGRATION IN LIGHT OF BREXIT

Brexit: European Economic Area (EEA) Workers

- The EEA Agreement allows for the free movement of trade and the free movement of workers
- Member states of the European Union are signatories of the EEA Agreement as well as Norway, Liechtenstein, and Iceland. Switzerland entered into a bilateral agreement with the European Union, and Swiss nationals have the right to live and work in the United Kingdom
- Nationals of the following states have the right to live in the United Kingdom:
 - Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland

Brexit: Impact on Right to Work in the UK and EEA

- No immediate impact on EEA nationals' (and their family members') right to work in the UK
- Employers can continue to hire EEA nationals and Swiss nationals (and their family members)
- United Kingdom nationals working in EEA member states continue to have the right to work

Brexit: Options for EEA Nationals

- Collate documentation evidencing their employment and residence in the United Kingdom.
- EEA nationals who have resided in the United Kingdom for less than 5 years may apply for a registration certificate confirming they have exercised treaty rights in the United Kingdom.
- EEA nationals who have resided in the United Kingdom for 5 years or more may apply for permanent residence confirming that they have acquired permanent residence.
- EEA nationals do not need to hold a registration certificate for 5 years before applying for permanent residence (they will be able to apply for permanent residence once they have completed 5 years' residence).
- EEA nationals who have held permanent residence documentation for 12 months may apply for British nationality.

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UK IMMIGRATION TRENDS

UK Immigration Trends

- Conservative government has a continued commitment to reduce annual net migration from the hundreds of thousands to the tens of thousands.
- Aim to achieve this by:
 - increasing the immigration skills surcharge levied on companies employing migrant workers from £1,000 to £2,000 per year;
 - controlling immigration from the European Union with new immigration policy;
 - increasing the minimum earning threshold for Appendix FM (family visas); and
 - increasing the immigration health surcharge to be levied on individuals accessing the National Health Service.
- Focus on incentivizing businesses to reduce their reliance on migrant workers by increasing the costs of hiring migrant workers.

UK Immigration Trends

- New process introduced to digitally scan all supporting documents to UKVI in Sheffield, United Kingdom for processing.
- Model to be rolled out globally with the aim of centralizing net migration applications.
- Difficulties faced include:
 - documents being omitted from application;
 - processing times being impacted; and
 - applications being refused incorrectly due to human error.
- Charges of £5.38 per email or £1.37 per minute by phone introduced to escalate errors made to UKVI.

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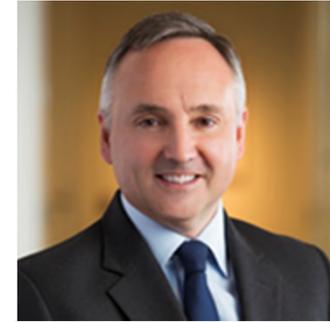


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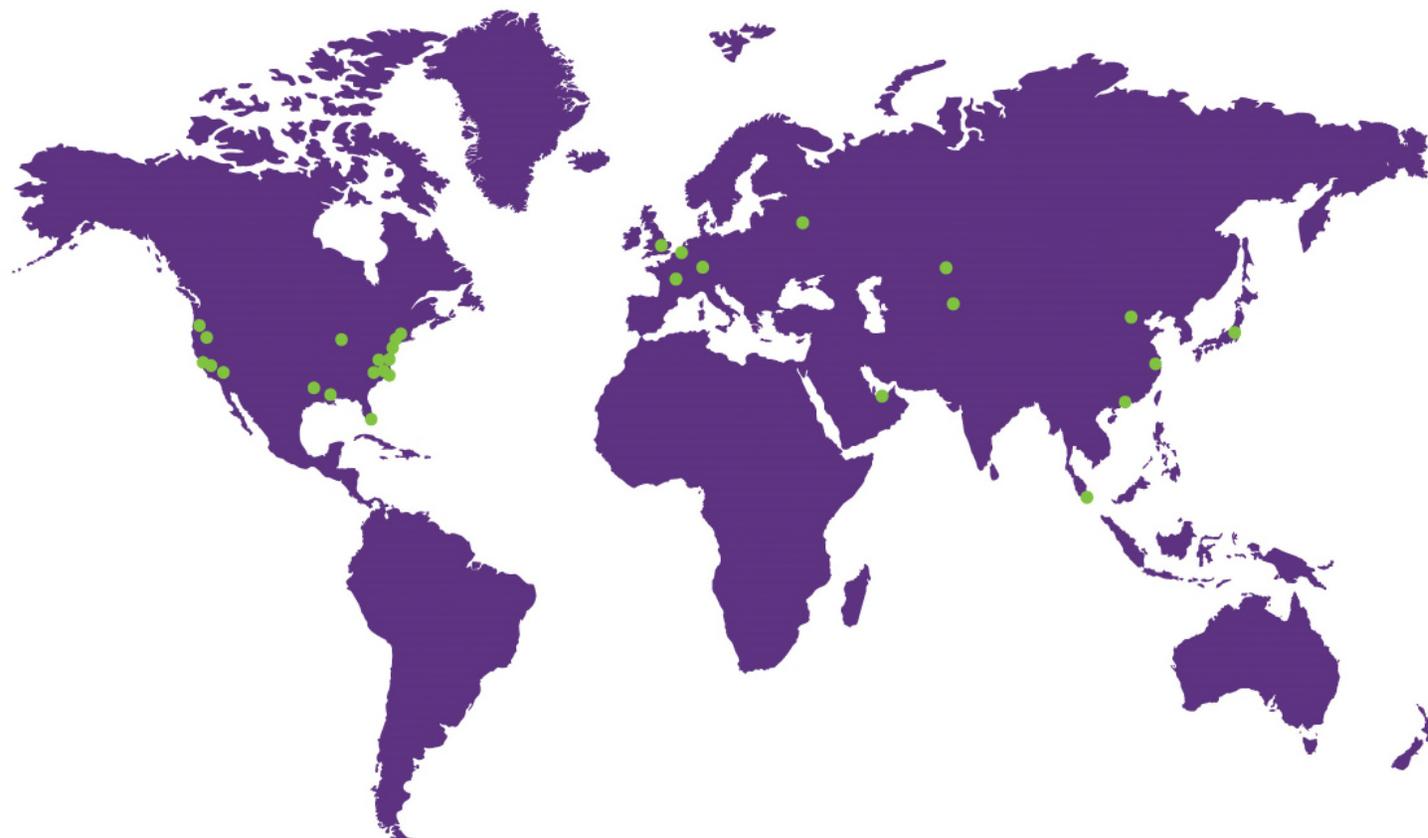
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North America

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