

# 7 Key Elements Of An Employer Immigration Program

By **Emily Allen**

In the past, many employers have considered providing immigration sponsorship for a candidate as a last resort — something they might do for a particularly compelling candidate, or if there was really no other choice — but they would not specifically recruit foreign national candidates.

Now, especially with unemployment at historic lows and many industries in a period of rapid growth, employers are rethinking the way they view candidates who require immigration sponsorship, considering international candidates to be a talent-rich applicant pool that should not be overlooked.



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But as employers hire more foreign national employees, they often find themselves managing an ever-expanding array of immigration-related issues — some of which are extremely challenging and highly impactful to the business — without a well-developed immigration program or defined immigration policies or procedures. In essence, they have outgrown the one-case-at-a-time approach.

Today's immigration climate is dynamic and complex on a global scale. It has never been more critical to develop and maintain a robust, comprehensive immigration program that supports the organization's overall business objectives while being nimble enough to accommodate frequent change in government policy.

This is true not only of medium-sized and large companies that may already have sizable foreign national employee populations, but also for smaller companies that may just be stepping into the world of immigration sponsorship.

Whether taking the first steps into setting up an immigration program, or putting more structure around an existing program, employers should keep in mind seven goals when designing a successful immigration program that will withstand rapid change and growth.

## **Retain Immigration Counsel**

Retain immigration counsel to support the organization's immigration needs, including not only preparing immigration applications, but partnering with employers on policies, employee experience, communication strategies and proactively getting ahead of issues.

As part of that relationship, engage in thoughtful dialogue regarding service level and expectations. Some considerations should include:

- Is cost savings the primary objective, or is a higher-touch service model more consistent with your business culture? Do you want your employees to be able to pick up the phone and speak with an attorney, or is checking the status of their visa application online sufficient?

- What kind of expertise do you need? Do you need advice on topics such as Form I-9 employment eligibility, E-Verify, export control and other immigration services?
- Is industry-specific experience critical to establishing the right relationship?
- Taking into account business growth strategies, what is the geographic scope of the engagement? For example, do you require services in countries beyond the U.S.?
- What capacity do you need in terms of case volume and filing speed?

### **Prepare a Playbook**

Discuss, set and document your company's immigration playbook. Immigration programs function most effectively and efficiently when driven by highly defined, well-reasoned policies and practices.

These policies and practices facilitate clear expectation-setting and consistent treatment of foreign national employees across time and business lines. Examples of these policy considerations are:

- Under what circumstances will the employer provide immigration sponsorship to a candidate?
- When, if ever, will the employer sponsor an employee for permanent residency?
- Where permitted by law, will the employee share in the cost of immigration sponsorship, and how so?
- Where permitted by law, will employees who leave the company be responsible for repayment of immigration costs, and how so?
- For what immigration matters, if any, does the employer use the government's premium processing service, which costs an additional \$1,440 per application to guarantee the government takes action on the case within 15 calendar days?
- Does the employer support immigration costs for family members of employees?
- What is the employer's objective with respect to immigration matters that can be politically charged in nature (e.g. Deferred Action on Childhood Arrivals, travel bans, family separation, etc.)? Will the employer make public statements in support of/against public immigration issues?
- In what ways should the employer's immigration program be centralized versus decentralized?

### **Establish Points of Contact**

Determine your points of contact for immigration matters, and then ensure those points of contact are known within the company and by your immigration provider. Immigration changes sometimes happen in an instant, and it is important that time is not wasted by first having to determine who within an organization is the point of contact.

For example, when the United States and other countries began implementing travel restrictions associated with the outbreak of the novel coronavirus, many employers were able immediately to huddle the relevant stakeholders and determine a strategy for how to monitor the issue, assess any known impacted employees and create travel-related resources.

Points of contact are not only critical for quickly mobilizing efforts, but also for consistency in how your immigration program operates.

### **Set Up Data and Reporting**

Get the right data and reporting in place. Data and routine reporting allow you to achieve a high-level understanding of your foreign national employee population, and facilitate fast response times when there are changes to the immigration landscape. Recent examples of why data and reporting are so critical include:

- The government's suspension/resumption of its premium processing program means needing to know what cases the employer has pending at a given time and whether premium processing should be leveraged.
- Travel bans based on country of citizenship or visited countries means needing to know quickly which employees may be impacted.
- Changes to the regulations around foreign nationals who have received public benefits means that the employer needs to know who holds a visa status that would be impacted.
- Merger and acquisition activity can require immigration analysis.
- New immigration policy that would make renewal of certain visa types impossible or challenging means that the employer must know which employees are impacted and what alternatives may be available to maintain employment.

### **Make Communication and Process Plans**

Set communication and process strategies, both with immigration counsel and with your foreign national population. When there is immigration information that you want or need your employees to know, decide who will take the lead on communication, how the communication will occur (for example, email blasts versus a posting on an internal company web page) and how questions will be routed and answered.

When immigration matters need to be initiated, determine how the process moves forward. Consider questions like:

- Do foreign nationals have direct access to immigration counsel, or are questions routed through internal company contacts?
- Are there dedicated immigration communications to foreign national employees, such as a monthly email newsletter?

- How do employees raise urgent/critical immigration issues?
- How are immigration matters initiated?
- What is the escalation protocol for case-specific questions/concerns?

### **Meet Regularly With Counsel**

Meet regularly with immigration counsel, including for the purpose of setting mutual goals. A high-functioning immigration program is one in which the goals of the business and of immigration counsel are aligned.

Whether it's weekly, monthly or quarterly, and whether it's in person or by phone, frequent communication facilitates several important elements:

- Immigration counsel can observe, understand and then mirror the employer's corporate culture when interacting with its employees.
- Counsel have a forum in which to communicate nonurgent trends and upcoming immigration changes that may impact the employer.
- Employers can raise questions/concerns with immigration counsel, whether they are case-specific or at a program level.
- Employers can keep their immigration counsel informed of new or changing business objectives, upcoming M&A activity and other relevant events.

### **Connect Immigration to Other Business Functions**

Ensure your immigration program is connected to other important business functions, such as recruiting, human resources, tax and M&A. Immigration teams — especially new or developing teams — should create a plan to evangelize internally the company's immigration program, points of contact, policies/procedures and resources.

Without these connections, employers can engage in activities that have an immigration impact without taking the required actions, which exposes the company to regulatory and compliance risks. In short, make sure immigration has a seat at the table.

Immigration has never been more complex or dynamic. The seven objectives outlined above will ensure that an employer has a robust immigration infrastructure in place to help it predict, react to and navigate even the most impactful immigration changes with confidence.

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