

## Legal

# Foreign labor visa process expected to ease in 2021

11 DECEMBER 2020 9:11 AM

The U.S. federal government's suspension of several foreign labor visas in response to the coronavirus pandemic created a labor shortage for some hoteliers, but the process will likely restart under a new presidential administration.



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REPORT FROM THE U.S.—After the Trump administration suspended the issuance of employment-based visas early into the coronavirus pandemic, hoteliers who relied on this labor force have had to make quick changes this year.

That suspension, however, will expire by 31 December. Even if extended into January, the visa suspension would likely be ended by the upcoming Biden administration, said Amanda Franklin, an immigration labor attorney at Moore & Van Allen. It might not be a Day 1 priority, but it's something likely to happen during the first quarter, she said.

This year has been challenging from a U.S. immigration perspective with several presidential proclamations issued in response to the pandemic, she said. The initial wave suspended entry for individuals coming from certain countries, but a second one suspended the issuance of new H-1Bs, H-2Bs and L's. It also covered J-1 visas for new interns, trainees, teachers, camp counselors, au pairs and summer work travel program participants.

"That really brought these programs to a bit of a full stop unless you can demonstrate that you are eligible for some kind of national interest exemption or waiver," she said, adding those weren't granted early in the year.

The administration's reasoning for the suspensions was it would prioritize the U.S. workforce when the economy was going through a downturn and people were losing jobs due to businesses closing temporarily or permanently, Franklin said.

### **Looking ahead**

The government allocates the number of visas it will issue twice a year, with the fiscal year starting 1 October, Franklin said. The applications process must be started in the summer to hire foreign workers through a visa program between 1 October and 31 January, which means, for example, hiring employees via H2B visas for the fall and winter wasn't possible because of the suspension.

The visa process for the second half of the fiscal year, for workers who would start in the spring, should start now, she said.

"A lot of employers have probably started the process already, because it is a process," she said. "You've got to recruit and do a variety of steps with the (U.S.) Department of Labor and Citizenship and Immigration Services."

Even if the Biden administration ends the suspension or allows it to expire on its own, there's another potential hiccup, Franklin said. Employers need to start working with the U.S. embassies in the countries from which they are looking to hire, but U.S. embassies worldwide have essentially shuttered since March.

"It's very difficult to get folks those appointments, and you've got to start early and you've got to be persistent with the embassy and with the process so that you can secure something for these foreign nationals to get their visa stamped," she said.

### **Staffing this year**

The Snow King Resort in Jackson Hole, Wyoming, normally closes in April to end the winter season, but because of the pandemic, it had to close in the middle of March this year, GM Gregg Fracassa said. The resort's employees stayed on a bit longer, and all of the local employees returned, but that still left the property understaffed at first.

"This is a market where we are heavily dependent on J-1s, and there are no J-1s," he said.

That increased the difficulty in hiring locals, but Fracassa said the strategy of making employees feel valued was a necessary approach even prior to the pandemic. When he started at the hotel, he had three full-time employees in housekeeping who were not on J-1 visas, but now all of the roughly 30 employees are all locals. Some employees travel 40 minutes to an hour from Victor, Idaho; Alpine, Wyoming or Afton, Wyoming.

"Again, another very, very important reason to be a premier employer in these types of areas," he said.

Many of the other hotels and restaurants in the area are struggling because of their reliance on J-1 visas and the limited local labor pool, Fracassa said. Hotels that opened first had an easier time hiring than those that had to stay shut down longer or waited too long to reopen.

Not every property struck out in hiring international workers, however. The W Aspen & the Sky Residences at W Aspen have a combination of employees local to the Roaring Fork Valley region of Colorado and some on international student visas, GM Greg Durrer said. The international student employees are gaining work experience as part of their hospitality education and programs.

"We have a nice balance of talent from a variety of areas that will be supporting our hotel this upcoming season," he said.