

Covid-19: reporting on a crisis

Covid-19 makes immigration policy more important than ever

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The coronavirus pandemic and the imposition of travel bans and other related measures has shown us that immigration plays a key role in supporting national security priorities. Leonor Echeverría, a partner in the Costa Rica office of US immigration firm Fragomen, details the impact of covid-19 on immigration in Latin America and considers what path countries should follow from now on.

In Latin America and the Caribbean, several countries – including Argentina, Bolivia, Cayman Islands, Colombia, Dominican Republic, Ecuador and Peru – imposed total entry bans, temporarily impeding entry to all individuals, including their own citizens. Other countries in our region levied partial entry bans, exempting citizens and legal

residents. In general, Latin American countries – with Nicaragua as an exception – imposed strict measures to contain the spread of the virus, such as declarations of emergency, entry bans, quarantines, military enforcement and cancellation of status.

Immigration is strategic for any country. According to the United Nations, the number of international migrants globally reached an estimated 272 million in 2019, an increase of 51 million since 2010. One need look no further than the latest trends in the US, the EU, the UK, the Middle East and other regions around the world to realise this topic remains at the forefront of public priorities, with polarising results depending on each country's objectives and strategies.

Why is immigration policy so complex? Why is it so difficult to get it right? What are countries balancing? I believe its complexity comes from governments trying to balance national security concerns such as terrorism, risks to public health, pressure on labour markets and public services, with the hope of attracting talent, investment, business opportunities and tourism. That is quite a predicament, both in theory and in practice.

Despite its strategic nature for countries and its citizens, immigration is frequently not given the significance and weight it deserves from relevant stakeholders both in the government and business sectors, and this needs to change.

Grave disruption

During the covid-19 crisis, governments have imposed – and continue to impose – restrictive immigration policies to control the spread of the virus and to protect local jobs. Following 9/11, security matters became paramount, and the world learned to live with restrictive and invasive travel measures, as well as similar immigration programmes designed to fight terrorism.

Labour market protection has historically been at the core of any immigration policy. With an unprecedented global depression and the need to protect populations during this large-scale pandemic, dramatic immigration policy changes will continue to materialise around the globe. As such, immigration policy remains governments' key tool when dealing with critical topics such as protection of local markets, global health and the threat of terrorism.

These immigration policies inevitably lead to a grave disruption of our society and our economy. During this current crisis, business planning, access to brainpower, access to foreign investment, just to name a few, became extremely difficult. At the micro level, we only need to look at specific examples of what happens when the world is paralysed. During the last few months, my firm has been receiving numerous client inquiries regarding people who have been unable to travel and reunite with their families because they do not have the correct immigration status or documents to enter a specific country because of a travel ban.

Others are anxiously awaiting confirmation from local authorities as to whether there will be concessions or waivers regarding expired visas, missed registration appointments, consular visas that were not actioned, applications that were not filed, and other associated immigration processes. The health crisis is evidently the main issue, but the collateral damage has been harmful beyond words. Considering immigration processes in many countries under normal circumstances are quite bureaucratic, lengthy, discretionary and complex, with this pandemic we are dealing with the most challenging situation that immigration practitioners and our clients could possibly imagine.

A uniquely complex field

Some countries have announced concessions for foreign nationals, even if they have not been formally implemented, such as possible waivers for those who were unable to complete their immigration procedures due to the covid-19 crisis, including extensions of expiration dates, grace periods and other similar measures. These will need to be determined on a case-by-case basis. All these measures change daily, and hopefully new favourable regulations will be introduced.

And we can add another layer of complexity: during normal times and now more than ever, immigration is highly personal and sensitive. Based on the principles of national security, immigration lawyers and advisors review payslips, payroll, and police, medical and health reports, among other confidential documents. Starting with PII (personal identifiable information), large amounts of sensitive information, such as medical history, criminal background, adopted children, religious orientation, even sex changes and social media information, depending on the jurisdiction, are reviewed by immigration authorities and immigration lawyers. From an individual's standpoint, it does not get any more personal or sensitive than providing this information. On the company's side, governments usually request copies of

numerous corporate documents, including – at times – personal information about their legal representatives, payroll and tax reports and documents to evidence merger and acquisitions, among others.

It is now more significant than ever to understand that immigration is a complex area of law that must be considered strategically and in greater depth. As an example, law schools should more broadly offer a specialisation in immigration law. This strategic field, where national security imperatives are always core to policy decision making, is not a simple and transactional topic. The reality is quite the opposite and governments and businesses should allocate the necessary resources to navigate the current complex environment and create opportunities to reap the benefits of an appropriate immigration policy.

There will be a “before” and “after” the covid-19 crisis. Things will not be the same. In my practice area, I think questions like these will come up less frequently: how can the immigration office request this corporate document, when according to the commercial code it is not mandatory? How can immigration authorities dictate that a work visa holder will lose his or her immigration status if this is a vested right? The short answer is because governments have ample powers under their countries’ constitution and the law. In times of increased discretionary authority, clients and in-house counsel should seek the right experts who can manage their immigration needs and help them navigate this complex environment, while at the same time properly safeguard their company’s and employees’ data.

Immigration compliance has always been critical, but due to the pandemic it is more important than ever because the immigration system will become more complex. As an example, a company can be banned from seeking work visas for a long period because one employee inadvertently failed to comply with covid-related travel rules.

What’s next?

As the covid-19 situation continues to bring profound changes to all aspects of society on a worldwide scale, surely there will be many long-lasting consequences. In the immigration area, new restrictions will probably be implemented to allow governments more control over the flow of migrants between nations, while stricter travel and work permit requirements will be introduced. These may include health insurance certifications, proof of vaccinations, affiliations to social security,

verification or monitoring of previous travel, medical exams to certify the foreign national's health and proof of insurance coverage to mitigate the impact on the host country's health system.

On the other hand, there is concern about reactivating the economy in this time of crisis. How will measures like entry bans and travel restrictions be balanced with the optimistic principle of immigration policy: attracting foreign talent and investment? Admitting skilled and experienced foreign nationals is necessary for any country's economy and its companies, both in the public and private sectors.

Today's world is completely interconnected, and countries must develop smart immigration policies to deal with each different migratory flow strategically. Short- and medium-term may include tourism, sports, artistic and special events travel, business travel, commuting, rotators, project-based technical assistance professionals, consulting, auditing and other short-term work, scientists, and medical professionals, among others. If a country wants to create a competitive advantage to attract investment, job-creating companies, entrepreneurs, revenue from tourism and other associated activities, each of these types of short-term travel must have a tailored and specific process, based on advanced programmes and strategies, international best practices and cutting-edge technologies.

There is also the need to advance programmes and policy guidelines for asylum seekers, who need to escape conflict and violence, human rights abuses, political persecution and natural disasters, among others. In this respect, the UN Global Forum of Migration and Development is a great source of information and high-level dialogue between nations.

Construction and agriculture are other areas that require specialised legislation regarding temporary migration programmes to address labour market shortages and seasonal work.

Medium- and long-term assignments for technical employees, professionals and company representatives are critical. It is only logical and smart to design efficient and friendly immigration processes for these assignees. Much of the burden and responsibility can be allocated to the sponsoring entity, so the government can hold it accountable. To remain competitive and attract more talent and investment, these types of transfers must undoubtedly not only be enabled, but actively promoted.

It is also advisable to develop advantageous programmes for private investors, retirees, entrepreneurs and other individuals who do not work for a company or institution. Some countries in our region even grant citizenship status to high net worth foreign investors under specific programmes created for this purpose.

Many other migratory flows require their own solutions, such as family reunions, naturalisations, citizenship-based and other types of immigration processes. In all, countries should be very strategic with their immigration programmes and avoid outdated, “one size fits all” solutions for all scenarios.

In the coming months and years, both from the academia and professional practice, immigration advocates, experts and practitioners will play a very important role in raising awareness of immigration as a critical policy instrument to attract foreign investment and talent. To remain competitive and develop healthy and constructive immigration programmes, governments and organisations will require first-class advice and information on comparative law and worldwide best practices.

Country: Costa Rica