

MEET THE PANEL



SUJATA N. CHAUDHRY

Title: Founder & CEO

Company: Tangible Development



ANTONIO CIVITELLA

Title: President & CEO

Company: Transfinder



MARK EAGAN

Title: President & CEO

Company: Capital Region Chamber



MARY NELLIS

Title: Director

Company: International Services, Rensselaer Polytechnic Institute



DAVID J. WILKS

Title: Partner

Company: Hodgson Russ LLP

Industry ROUNDTABLE

IMMIGRATION

PRESENTED BY:  **Hodgson Russ** LLP
ATTORNEYS

What concerns do employers have about the immigration process? What industries would be most affected by a slowdown in immigration? Is the push for green cards slowing? Law firm Hodgson Russ and the *Albany Business Review* hosted a remote panel discussion to answer these questions and more. Melissa Mangini, editor of the *Albany Business Review*, moderated the discussion.

Can we talk about the positives — and also the complexities — that come out of immigration?

SUJATA CHAUDHRY: Skill sets and experience are organizations' No. 1 reason, especially with our technology clients and health care clients. It's in education, experience and those qualified skills that we find shortages here in the U.S. That's why immigration is such a critical piece for these organizations and companies.

DAVID WILKS: One of the misconceptions about immigration is that employers are going out abroad and trying to find foreign workers to bring to the United States. But more often than not, high skill employers are hiring foreign nationals already at institutions like Rensselaer, where they've been learning here in the U.S., from the best institutions we have here. These foreign-born graduates have these amazing skill sets and they're more willing to go to employers that are willing to sponsor them. In upstate New York, sometimes employers have a harder time attracting people away from New York City or LA or Chicago.

If an employer is willing to sponsor immigration, they can attract some amaz-

ing talent that brings not only this skill set but a diversity of worldview, which is increasingly important in a more global economy.

MARK EAGAN: If you're going to compete globally, you need those perspectives of the world within your organization. Plus, we have to look at what the demographics are in the United States. If you look at the Capital Region and the number of people who are going to retire in the next 10 years and what the pipeline is, we don't have enough people to fill it. Unless we're prepared to shrink our economy, it means we have to get them from somewhere else.

ANTONIO CIVITELLA: There's a shortage. There's clearly a lot more jobs than people in this area. We know that. We know this is temporary. It's not going to be the norm, and it's going to come back. The problem that we've had a lack of a skill set, is going to continue. We've already had a lot of remote workers, especially at the company that we created in Shanghai, and we're also in Austin.

I think companies in the Capital Region, eventually when they get back to normal, are going to look at people outside of the Capital

Region. They're going to work for the company, but they're going to work remotely. We've always looked at the local colleges for H1 visas and H-1B visas. Why do that? So many companies are going after these people. People can work from their home or a different location. Capital Region companies could literally have employees that work all over the country, that have the great skill sets. Why think about how to hire local employees? Why not start figuring out how to hire remote employees throughout the country?

MARK EAGAN: The long-term solution is we need to make sure that our population doesn't shrink here. I think the way people look at work is going to be different. A lot of people didn't like staff people working remotely. They've had this experiment now for a couple of months, and I think some companies are going to be more open to it. Tony realizes you can work remotely, and the culture is a very unique culture.

Has the transition between students and the workforce, and students coming into schools in the Capital Region, changed dramatically over the past couple months?

MARY NELLIS: The big discussion is what happens if all classes are going to be remote during the fall. This is really significant to international students because they have rules on how many classes they can take online. Temporarily, the government has suspended some of the regulations during the COVID period, but we don't know how long that's going to last. A lot of it is an overwhelming amount of ambiguity.

At Rensselaer Polytechnic Institute, our

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TAKE

“That’s basically what I do with companies is we sit down, we say, “Look, what are your needs? How do we need to make this work?” And we go through the entire alphabet of non immigrant visas to figure out, will this particular visa work for this particular employee?”

DAVID J. WILKS, partner at Hodgson Russ LLP. David is in the immigration practice, where he concentrates on business immigration. He guides companies, nonprofit organizations, universities and entrepreneurs in preparing and submitting non-immigrant (temporary) and immigrant (permanent residence) petitions. David also assists foreign medical graduates in obtaining waivers and lawful status, as well as individuals in obtaining marriage-based permanent residence and U.S. citizenship.



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international students are about 21% of the entire student body, which is a really high percentage. And it’s a significant loss in revenue. It’s a significant shift in the campus culture. On the front end, it’s shorter-term: what are we going to be doing in this coming year? Long term, how is this group of incoming students going to affect the bottom line going forward for the institution?

We have not seen too many students on their Optional Practical Training, which is at least 12 months of work in a student’s field of study, until after they complete their program. It could potentially be up to three years. It’s still under the F1 no-immigrant visa before they would transition to an employment visa or a permanent residency. And we didn’t see an initial wave of students who lost their jobs. We’ve seen a number of students who are transitioning to working remotely, as we all are. Going forward, the Optional Practical Training piece with our international students is a selling point for them because investing in students and giving them a workpiece or potentially sponsoring them for a permanent residency is an expensive and long-term commitment.

Being able to utilize Optional Practical Training for up to potentially three years allows businesses to test the waters and spend that initial time investing in time and training. Beyond this upcoming year, we don’t exactly know how this is going to affect our students, but we didn’t see a downturn in students applying for Optional Practical Training.

What we’ll probably see in the next three months is, when students can’t find jobs, or hopefully not, hopefully they can find jobs, but if they cannot find jobs, they will have to depart the United States, then we will lose quite a large skilled base of workers.



Do you see the push for green cards slowing because of the Coronavirus?

WILKS: It might be the opposite, in a way, because green cards (or permanent residence) are something that you can work on right now irrespective of whether you have to leave the U.S. to go get a visa stamp and come back in. There are certain temporary categories, particularly cross-border visas for Canadians, that you can apply for at the border. With those particular categories it becomes a little bit more precarious working in travel. Even if you can make the case that the travel is essential, it becomes a bit more difficult with all the quarantine requirements. People just don’t want their employees traveling right now.

Likewise, there are certain types of temporary visas where you’re transferring an employee from one place to another. And if you’re in a large enough company, you can do that at a consulate outside the U.S. But consulates aren’t really open right now and a lot of the focus has been on longer-term options that you can do right now in the U.S.

With respect to permanent residence, there’s nothing that prevents you from filing for permanent residence for your employee right now. And depending on who the employee is, that path to permanent residence could be a couple years or a couple of decades. There’s always this cost-benefit analysis to the employer deciding when to start the permanent residence process. Once the employee has their green card, they’re free and clear and can go work at any employer in the United States. While you’re sponsoring them for temporary visas, they’re much more attached to you. But, employees will want you to get started on permanent residence

particularly if they’re coming from India or China, from which they are facing very, very long wait times to get to that permanent residence.

The burden of taking that employee away from you is much lower once they have that green card. But again, you won’t be able to continue employment of that employee down the line unless you do start that permanent residence process.



What have you been hearing from your clients about visas? What industries have been most affected, and what would a decline in immigration mean for certain industries?

CHAUDHRY: We’ve been working with clients that are in the financial and technology industries, and it hasn’t really slowed down their push because of the skill set they need. It also depends on the division and the department they’re looking for. We just worked on an entire program with a global financial client, and they’re sponsoring and hiring currently. It depends on which department, skill set, job requirement and need, and what they’re looking to accomplish.

It’s not necessarily any one sector or individual, but obviously it’s going to impact immigration in general. The skill set we’ve had a shortage for existed prior to COVID-19. Employers that need specific skill sets are looking into how they are going to pick up and reapply for or sponsor people once the virus slows down and the gates open up again? They’re looking at it like immigration, for us, is not a consideration, or these visas are not a consideration. They’re saying, in the meantime, what can we do to sustain that position so we can go ahead and look for employees that meet that skill set.

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ATTORNEYS**What concerns do employers have about the immigration process and what they're experiencing?**

EAGAN: The frustrating part is that as a nation, we've made no meaningful progress for two presidential administrations. The issue is only going to get more challenging, and having these band-aid approaches doesn't work. It doesn't seem like in the short term, there's really the solution. What I hear from the business community is they're looking for leadership in Washington to realize that we are a global economy.

We're not taking jobs away from Americans. We have companies that have locations throughout the world, and how do they operate? The more that we can have the conversation around these issues and not make it such a political one, because really it's an economic issue, I think we could find consensus not to hit the rewind button.

Back in the Obama administration, you had senators from both sides that agreed, and we thought they were actually going to do something. We couldn't make progress then. With the Trump administration, some of their broader views have been relative to borders and immigration. The frustration from the business community is we're not really taking a holistic view or long-term progress to really solve the issues.

CIVITELLA: We're not given any direction. There's a lot of miscommunication and people come to their own conclusions. We actually think the job market is strong, and there's a lot of opportunities out there, but all of a sudden, there's this stigma, "Well, why are you not hiring Americans? There's enough people out there." We're giving everyone a \$2,000 bonus. We'll give a total stranger \$2,000 if you help your grandson get a job at Transfinder. Really, we were desperate again.

Things keep changing. We're trying to figure out, and all of a sudden it became more challenging. Why did it become so much harder to get an H-1B renewal?

WILKS: Back in 2017 through the normal H-1B process, all of a sudden everybody started to see what we call RFEs, or Requests for Evidence. Normally, you send a petition to the government, and then if the government has questions about it or has concerns, you get something called a Request for Evidence. And all of a sudden these were just skyrocketing, even if the RFE didn't make much sense. For example, one of the factors of an H-1B is having to show that it's bachelor's-level work. You'd have an engineer or even a doctor or a dentist, and we'd get an RFE back saying, prove to us that this dentist position requires a bachelor's degree. I wouldn't go to a dentist that didn't have a bachelor's degree.

This uptick in RFEs was a result of the

"Buy American, Hire American" executive order, which encouraged all of the agencies to figure out ways of encouraging U.S. employers to hire American workers. U.S. Citizenship and Immigration Services (USCIS) then started to interpret their regulations more strictly. USCIS also took away what they used to call the deference policy, where if you previously had an H-1B approved and nothing had changed, USCIS would defer to that previous adjudication and you would get an H-1B extension. Now they treat every H-1B as a brand new H-1B petition.

Because of some pushback from lawyers and the immigration bar, it's settled down a little bit. An agency can't really change the way it does things if the law hasn't changed. There's been a lot of lawsuits along those lines. Things have settled down a little bit, but it certainly is not easy to get through this process right now.

And that goes to the point of, why not hire a U.S. worker? Just as a fine point, you can't discriminate based on nationality. But there's nothing that requires you to pay for sponsorship, and I think most employers would rather not pay for sponsorship if they didn't have to. If an employer can find somebody that has the skill set that doesn't require payment of immigration fees, and immigration lawyers and all the rest, that would be a godsend to them.

CHAUDHRY: Absolutely. The process is so

HODGSON'S TAKE

"A lot of immigration is looking at the availability, looking at the options that are available to you, and looking at the risk tolerance that you have both on the employer side and the employee side."

DAVID J. WILKS,
partner at Hodgson
Russ LLP.

Dedicated to the details.

Our more than 25 years of experience in the field of immigration law includes representing large, multinational companies, as well as in assisting U.S. citizens and permanent resident aliens to reunite with their families.

We represent employers in connection with temporary and permanent employment and intra-company transfers of foreign workers, and the periodic entry of business visitors. We maintain great familiarity with the U.S. Citizenship and Immigration Services' four regional service centers, U.S. Customs and Border Protection, and U.S. Consular offices around the world.

Our attorneys have substantial experience with the filing processes for a broad range of petitions and applications.

Because at Hodgson Russ, we believe that to see the big picture, you have to know the small details.

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expensive. It's grueling, and then there are cultural language barriers, isolation, things you have to take into consideration when you bring immigrants here who may have the technical skills and the education and the background. But with it comes a lot of other things that employers also have to consider. The company culture, the isolation that occurs, the cost of moving them here, the cost of the visa itself. The immigration process has always been complicated, and I don't think it's any different now.

It is a godsend to find someone that is qualified in the U.S. and who has a citizenship. The question here is, can we find that talent? And are we creating the pipeline that we need to? And what are our universities and workforces doing to prepare the future for the talent that doesn't exist and the jobs that exist? A lot of times the conversation becomes about all these visas, but it's more. We need to start looking as a global economy and as a country, as to how do we create the workforce that we need for the future? And what are we doing as organizations to develop that? And what are we doing internally and externally to do that? We don't have to go through the immigration process if we don't need to, and we have the pipeline here and the talent here.



With all these challenges, as well as the uncertainties surrounding coronavirus and the likely recession we're going to be facing, what is your outlook on the demand for skilled international labor six months from now and beyond?

EAGAN: We're going to have a blip right now. I don't think we know how deep it's going to be or how long it's going to be. However, workforce issues will continue to be the major issue. I don't see this going away because companies know how much work it is in the process. And they realize that while we will have post-COVID for a while, they can't just put everything on their business on hold. I don't think we're going to have dramatic shifts in the short- or long term.

CIVITELLA: We're obviously not going to stop the hiring process. We're always going to try new things. We have a company in Shanghai that's owned by Transfinder, and we launched a new one in Hyderabad, India. These are L1 visas that are just transfers. We've already had four people from Shanghai come to United States. Some of them were in a long stay, maybe three, four months. And that was exciting.

It's not just finding talent here. We're also having a hard time finding it all over. That's one of the benefits of working for a company like Transfinder in Shanghai. It might give you an opportunity to have an L1 visa to go to the United States. We're doing it now. This past summer, we brought someone here who was here for the whole summer. We put them up at a really nice place down the street. We are definitely going to be doing that. The H-1Bs – maybe not as much for us at this point.

I love the L1 visas. One way to keep that culture going is to bring some people here and maybe let them stay for a year. They'll



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realize, "Oh, wow, this is amazing company," and they go back and make sure that culture is continued. It's something I don't hear anybody talking about.

CHAUDHRY: With global clients that we've been working with, the L1 comes up in conversation more so now than it did before. A culture shift is now occurring from the person that held the belief, "I want my employees under my roof, in here, working 8-5 accountable hours." What's happening with COVID is that because we are all remote for the most part, it's changed the cultural perspective in organizations where that insecurity of not having that employee under their roof, doing the 8-5 traditional work hours, doesn't exist. The L1 now is being discussed even more.

Now the conversation is, "Oh, maybe they don't need to be here as a global company. Maybe they don't need to be in-house. We were doing what we were doing with all our employees with an L1." Before, because of that cultural mentality, it wasn't so easily viewed as a benefit to use the L1. You're going to see that balance occurring where you're going to have some of the H-1B visas and you're going to have the L1s and they're going to start to come to the middle.

NELLIS: This American-hire-American could really backfire when we have American companies that can find talented work overseas and the talent is working remotely. And maybe they come in on a B1 business visa every once in a while to visit. My preference is to have people come and work for companies, but given that if you're thinking outside the box and hiring individuals across the country, why aren't we hiring individuals internationally who have studied in the United States who are familiar with the culture and the work culture? Maybe they've done a year of Optional Practical

Training and they can't get their H-1B visa or their permanent residency. With this cosmic shift of working remotely, that might be another thing that local businesses do to think out of the box as well.

CIVITELLA: My son's going to be 10 in a couple more months, and he is going to work for a company that potentially is not in the United States. Of course, that's like 20 years from now, but honestly, it's going to happen within a couple years now because this is global. And I hope that when we come out of this that we think this way, that we should attract a lot of people that live in this area, but not worry about where they work. I think that will happen.

Why are we not trying to look at employees all over the world? We still have to vet people. That's where we need people like Mary to say, hey, they came through our organization. At least there's a vetting process. And we still have to hire the right people.

NELLIS: From my perspective, international education is a huge export in the United States, and it's just one more way to take advantage of that. We've got internships, we've got cooperative work relationships, and then there's a PT afterwards. If companies are stuck in this inability to find the skilled labor within the U.S. workforce, what are other options to help our businesses in the United States thrive themselves?

EAGAN: If people decide to live here and if they work somewhere else, we have their residences, they're paying taxes. Ultimately, they might end up working for a local company. The thing that would be interesting to watch is if more people from New York City will move to the Capital Region after all this. It will be interesting to see if that happens like it did after 9-11. ■■■

COMING UP

Industry Roundtable is an ongoing series of discussions with business leaders sponsored by Hodgson Russ. Look for the next Industry Roundtable discussion in the **June 19** edition on Construction.