



## JUNE 2007 IMMIGRATION UPDATE

*Posted on June 1, 2007 by Cyrus Mehta*

### Headlines:

- **1. [Immigration Reform Bill Passes 'Test' Vote in Senate](#)** - The Senate's bipartisan bill on comprehensive immigration reform has passed a "test" vote; formal debate has begun.
- **2. [DOL Publishes Final Labor Certification Rule, Prohibits Substitutions; USCIS Terminates Premium Processing for I-140s Requesting Substitutions](#)** - The regulation's provisions apply to permanent labor certification applications and approved certifications filed under both the Program Electronic Review Management (PERM) program regulation and previous regulations.
- **3. [DOL Releases PERM Labor Certification FAQ](#)** - The Department of Labor released the Tenth Round of Frequently Asked Questions on PERM labor certification .
- **4. [USCIS Issues Final Rule Increasing Fees](#)** - USCIS has issued a final rule that drastically increases fees for many immigration benefits.
- **5. [OFLC Clamps Down on Extensions for NOF Rebuttals](#)** - The BECs will no longer routinely grant extensions to the time allotted by regulation for employers or representatives to rebut a Notice of Findings.
- **6. [USCIS Announces H-1B Cap Receipting Time Frames](#)** - USCIS provided projections for fee receipting and data entry processing for H-1B cap cases currently at the Service Centers.
- **7. [DOL Holds H-2B Briefings, Releases Filing Tips](#)** - The DOL held two national briefing sessions to discuss recently updated guidance for State Workforce Agencies and ETA National Processing Centers when processing H-2B labor condition applications in nonagricultural occupations.
- **8. [June Visa Bulletin Shows Significant Advances in EB-2 for China,](#)**

[India; All EB-3 Categories](#) - The Department of State's Visa Office has advanced the June cut-off dates significantly.

- **9. [Lawsuit Threats Discourage Foreign Investment, Top Executives Say](#)** - Several CEOs of foreign companies invested in the U.S. said that litigation is a disincentive to conduct business here.
- **10. [U.S. Consulate in Toronto Announces Minimum Two-Day Wait for Passports](#)** - All stateside visa applicants and those with urgent travel plans now have to wait a minimum of two business days for return of their passports if their visas have been approved.
- **11. [State Dept. Publishes Key Officers Directory](#)** - The Department of State has released the latest version of its Telephone Directory, which includes key officers of foreign service posts and contact information .
- **12. [Regulation Tracker Enables Searches for Rules, Proposed Rules, and Notices](#)** - Justia Regulation Tracker allows a user to search and track the Federal Register with a drop-down menu of all departments and agencies.
- **13. [CBP Border Patrol Sponsors NASCAR Car](#)** - U.S. Customs and Border Protection's Border Patrol has sponsored a NASCAR Busch Series car to "rev up" its ambitious hiring and recruiting of individuals interested in pursuing a career in border security.
- **14. [TPS Extended for Nicaraguans, Hondurans](#)** - An 18-month extension of temporary protected status (TPS) for Nicaraguans has been granted, from July 5, 2007, to January 5, 2009.

## Details...

### 1. Immigration Reform Bill Passes 'Test' Vote in Senate

The Senate's bipartisan bill on comprehensive immigration reform (S. 1348) has passed a "test" vote, 69-23. Senators have now begun formal consideration of the legislation. Among other things, the new legislation would establish a guestworker program and allow many undocumented persons to remain in the U.S. under a new "Z" visa program. The bill features a "points system" in lieu of many of the current family- and employment-based visa categories. Those with certain types of education and experience, and those with English skills, would be favored under the legislation. The bill contains additional enforcement and border control provisions. Sen. Edward M. Kennedy (D-Mass.) called it "the most far-reaching immigration reform in our history."

Under the Senate bill, up to 400,000 temporary guestworker (Y-1) visas would be provided in the first year, with increases or decreases depending on whether and when the cap is reached in the previous year. A complex three-tier system would include consideration of how long a person has been in the U.S. A separate guestworker program for farm laborers is also included.

The bill would increase the H-1B cap from 65,000 to 115,000 beginning in fiscal year 2008 and 180,000 annually after that, and would exempt from the annual cap a worker who has: (1) earned a master's or higher degree from an accredited U.S. university; or (2) been awarded a medical specialty certification based on post-doctoral training and experience in the U.S.

The bill would require employers and subcontractors, within 18 months, to verify the legal status of new hires by using an electronic verification system. The maximum fine for hiring an undocumented worker would increase to \$20,000 for each worker and repeat offenders could be sent to jail.

The Information Technology Association of America (ITAA), a lobbying group that represents high-tech companies, fears the bill will not address sufficiently the shortage of skilled workers and will make it harder to hire qualified foreign workers. ITAA President and CEO, Phillip J. Bond, noted in a letter to Sens. Harry Reid and Mitch McConnell how quickly the H-1B cap for fiscal year 2008 was reached, thus preventing many employers from recruiting skilled foreign nationals.

Among other things, the ITAA expressed concerns that the bill eliminates existing "degree equivalency" provisions so that employers would be barred from obtaining H-1B workers if their formal degrees do not correlate exactly to proposed positions; and ends dual intent for both H-1B and L-1B nonimmigrants, "interfering with the ability of companies to recruit from U.S. universities and seek a green card for them while employing them on an H-1B."

The ITAA also said the proposed point system would "diminish America's competitiveness by making nonimmigrant visas and green cards even more difficult to obtain." Among other things, the ITAA noted, highly skilled professionals recruited by firms would be forced to compete with self-nominated applicants for the small number of available visas. "The proposal will move America's immigration system away from one that is sensitive to business needs to one driven by the perceptions of government employees," the ITAA said, adding that the proposed employment verification system, which

is based on the current Basic Pilot Program, "needs a significant IT investment to make the system scalable for all employers to use as well as to reduce the current error rate within the system."

Opposition to the bill is expected in the House of Representatives. The White House reportedly favors the bill, but its lobbying efforts are being resisted by House Republicans, who fear anti-"amnesty" sentiment among their constituents. A variety of amendments are being offered in the Senate. Meanwhile, in June, a House-Senate conference committee is expected to attempt a compromise version, which may include tougher border control and enforcement measures to be implemented in advance of any mechanism providing legal status for the undocumented.

A summary of the Senate bill's main provisions is available at <http://immigrationforum.org/documents/PolicyWire/Legislation/110/SenateBillQ&A.pdf> . The full text of the bill is available at <http://www.aila.org/content/default.aspx?docid=22422> (scroll down to view text). The ITAA's letter to the Senate is at <http://www.ita.org/upload/news/docs/s1348letter.pdf> ; an attachment outlining the ITAA's key concerns is at <http://www.ita.org/upload/news/docs/1348concerns.pdf> .

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## **2. DOL Publishes Final Labor Certification Rule, Prohibits Substitutions; USCIS Terminates Premium Processing for I-140s Requesting Substitutions**

The Department of Labor (DOL) published a final rule, effective July 16, 2007, to "enhance program integrity and reduce the incentives and opportunities for fraud and abuse related to the permanent employment of aliens in the United States." The provisions apply to permanent labor certification applications and approved certifications filed under both the Program Electronic Review Management (PERM) program regulation, effective March 28, 2005, and previous regulations implementing the permanent labor certification program.

In general, the DOL answered commenters' concerns about a wide variety of issues, such as increased costs and the loss of priority dates resulting from the new prohibition on substitution of beneficiaries, by maintaining that the benefits of the new provisions to the labor market and in preventing fraud outweigh the concerns of individual employers.

Meanwhile, U.S. Citizenship and Immigration Services (USCIS) announced that beginning on Friday, May 18, 2007, Premium Processing Service is no longer available for Immigrant Petition for Alien Worker (Form I-140) petitions that request labor certification substitution. USCIS anticipates a substantial increase in the number of petitioning employers that will file I-140 petitions requesting Premium Processing Service and seeking labor certification substitution before July 16, 2007. The volume of such petitions is expected to exceed USCIS' capacity to provide the service according to the program guidelines.

The rule's major provisions include:

A prohibition on the substitution of beneficiaries . This prohibition will apply to all pending permanent labor certification applications and to approved permanent labor certifications. The prohibition does not affect substitutions approved by the DOL or Department of Homeland Security (DHS) before the effective date. It also does not affect substitution requests in progress as of the rule's effective date. The final rule also prohibits the sale, barter, and purchase of labor certification applications and approved labor certifications. A 180-day validity period for approved labor certifications .

Employers will have 180 calendar days within which to file an approved permanent labor certification in support of an I-140. All permanent labor certifications approved on or after the effective date will expire 180 calendar days after certification, unless filed before expiration in support of a Form I-140 petition with DHS. Likewise, all certifications approved before the final rule's effective date will expire 180 calendar days after the effective date unless filed in support of a Form I-140 petition with DHS before the expiration date.

A requirement that employers pay the costs of labor certification , including preparing, filing, and obtaining certification. The beneficiary may pay attorneys' fees for representation of the beneficiary or other "legitimate" costs incurred by him or her, but an employer's transfer to the beneficiary of the employer's costs incurred is strictly prohibited. Prohibited payments include, but are not limited to, employer fees for hiring the beneficiary; receipt of part of the beneficiary's pay, whether through a payroll deduction or otherwise, as reimbursement; reducing the beneficiary's pay for purposes of reimbursement or pre-payment; goods and services or other wage or employment concessions; kickbacks, bribes or tributes; receipt of payment from beneficiaries, attorneys, or agents for allowing a permanent labor certification application to be filed on

behalf of the employer; or the payment by the beneficiary of the employer's attorneys' fees.

The establishment of procedures for debarment from the permanent labor certification program. The DOL may debar an employer, attorney or agent for up to three years based on certain enumerated actions such as fraud, willful provision of false statements, or a pattern or practice of noncompliance with PERM requirements, regardless of whether the labor certification application involved was filed under the previous or current regulation. The rule extends from 90 to 180 days the period during which the DOL may suspend processing of applications under criminal investigation. The rule adds an intent requirement ("willful") to the false information section; to be actionable, the employer must willfully provide false or inaccurate information to the DOL. The rule expands the existing provision for a right to review the DOL's denial of an application or revocation of a certification, to encompass a right to review of a debarment action. The request for review would be made to, and in appropriate cases a concomitant hearing would be held by, the Board of Alien Labor Certification Appeals (BALCA).

Clarification of the DOL's "no modifications" policy for applications filed on or after March 28, 2005, under the PERM process. The rule finalizes with minor changes a provision in the proposed rule prohibiting modifications to permanent labor certification applications once such applications are filed with the DOL.

The final rule includes details on issues raised by public comment and the DOL's resolution of those issues, the DOL's cost-benefit analysis, and statistics on small businesses' use of labor certification. It was published on May 17, 2007, and is available at

<http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/pdf/E7-9250.pdf> . USCIS's new procedures under the final rule are

available at

<http://www.uscis.gov/files/pressrelease/PermRuleLaborCert052407.pdf> .

USCIS's press release announcing termination of Premium Processing Service is at

<http://www.uscis.gov/files/pressrelease/PPSPERMRule051707.pdf> .

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### **3. DOL Releases PERM Labor Certification FAQ**

On May 10, 2007, the Department of Labor released the Tenth Round of Frequently Asked Questions on PERM labor certification. The FAQ includes information on notices of filing, advertisement content, and types of evidence in response to audit requests. See

[http://www.foreignlaborcert.doleta.gov/pdf/perm\\_faqs\\_5-9-07.pdf](http://www.foreignlaborcert.doleta.gov/pdf/perm_faqs_5-9-07.pdf) .

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#### **4. USCIS Issues Final Rule Increasing Fees**

U.S. Citizenship and Immigration Services (USCIS) has issued a final rule, effective 60 days from the May 30, 2007, publication date in the Federal Register, that, for the most part, drastically increases fees for many immigration benefits. USCIS said that without these fee adjustments, the agency would not be able to maintain critical business functions, properly address fraud and national security issues, and process incoming applications and petitions in a timely manner. The rule also expands the proposed fee waiver policy to include additional classes of applicants and petitioners who may apply for a waiver of certain application and petition fees for certain services.

Selected specific increases include:

- Petition for a Nonimmigrant Worker (Form I-129): Fee increased from \$190 to \$320
- Application for Travel Document (Form I-131): Fee increased from \$170 to \$305
- Immigrant Petition for Alien Worker (Form I-140): Fee increased from \$195 to \$475
- Application to Register Permanent Residence or Adjust Status (Form I-485): Fee increased from \$325 to \$930
- Immigrant Petition by Alien Entrepreneur: Fee increased from \$480 to \$1,435
- Application to Extend/Change Nonimmigrant Status: Fee increased from \$200 to \$300
- Application for Waiver of the Foreign Residence Requirement: Fee increased from \$265 to \$545
- Application for Status as a Temporary Resident (Form I-687): Fee increased from \$255 to \$710
- Application to Adjust Status from Temporary to Permanent Resident (Form I-698): Fee increased from \$180 to \$1,370



- Application for Employment Authorization (Form I-765): Fee increased from \$180 to \$340
- Biometric Services: Fee increased from \$70 to \$80

An advance copy of the final rule is available at

<http://www.uscis.gov/files/nativedocuments/FinalRule.pdf> . USCIS's press release is available at

<http://www.uscis.gov/files/pressrelease/FinalFeeRulePressRelease052907.pdf> .

Questions and answers from USCIS are available at

<http://www.uscis.gov/files/pressrelease/FinalFeeRuleQsAs052907.pdf> .

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## **5. OFLC Clamps Down on Extensions for NOF Rebuttals**

Employers with permanent labor certification applications pending at the Backlog Elimination Centers (BECs) should note that the BECs will no longer routinely grant extensions to the time allotted by regulation for employers or representatives to rebut a Notice of Findings (NOF). The Office of Foreign Labor Certifications will only grant such extensions for the "most extreme extenuating circumstances." In the absence of a granted extension, applications for which a timely rebuttal is not posted by the deadline stated in the NOF will be denied. OFLC also strongly encourages employers and representatives to send in their responses to NOF letters and Recruitment Report Instructions letters as soon as a response is prepared. Although regulations set forth specific timelines for the maximum time allowed for a response, employers and representatives need not use the full allotted time to respond.

These notices, and additional information on labor certifications, are available at <http://www.foreignlaborcert.doleta.gov/> .

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## **6. USCIS Announces H-1B Cap Receipting Time Frames**

Because of the unprecedented volume of recent H-1B filings, U.S. Citizenship and Immigration Services (USCIS) is temporarily experiencing a receipting/data-entry (DE) "frontlog" at its Service Centers. USCIS provided the following projections for fee receipting and data entry processing for H-1B cap cases currently at the Service Centers. These projections do not apply to Premium Processing or I-129 H-1B (cap or non-cap) cases:



California Service Center . USCIS expects to provide in time-compliance for receipting of all form types by June 15, 2007.

Nebraska Service Center . USCIS is currently providing in time-compliance for receipting of all form types as of May 10, 2007.

Texas Service Center . USCIS is currently providing in time-compliance for receipting of all form types as of May 10, 2007.

Vermont Service Center . USCIS expects to provide in time-compliance for receipting of all form types by June 2, 2007.

USCIS noted that it may take additional time for a Service Center to complete fee receipting and data entry of an application or petition received and for the receiving Center to mail the appropriate receipt notice. USCIS recommends that persons who have filed a petition or application with USCIS wait at least 30 days from the applicable receipt processing time frame noted above before contacting USCIS with inquiries. If a response is not received from USCIS within 30 days of the dates listed above, USCIS recommends checking the Web site at <http://www.uscis.gov> or calling USCIS customer service at 1-800-375-5283 for updated processing information.

USCIS's announcement is available at <http://www.uscis.gov/files/pressrelease/H1BReceipts051107.pdf> .

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## **7. DOL Holds H-2B Briefings, Releases Filing Tips**

In early May, the Department of Labor (DOL) held two national briefing sessions in Chicago and Atlanta to discuss recently updated guidance for State Workforce Agencies and ETA National Processing Centers (NPCs) when processing H-2B labor condition applications in nonagricultural occupations. The purpose of the briefing sessions was to inform the user community of the processing protocols implemented at the NPCs in Chicago and Atlanta. To ensure that all employers are aware of the filing requirements, and to ensure that applications for H-2B visas are processed in the most efficient manner, the DOL has released filing tips for employers submitting H-2B applications.

The DOL also has released updated guidance for State Workforce Agencies and ETA National Processing Centers when processing H-2B labor condition applications in nonagricultural occupations. The guidance replaces and

supersedes previous operating procedures issued under General Administrative Letter (GAL) 01-95, GAL 01-95, Change 1, and Field Memorandum (FM) 25-98. The DOL said that the guidance is intended to work in concert with the new centralized filing process at the NPCs to ensure greater consistency in the processing of H-2B applications. Special handling procedures for certain nonagricultural occupations, such as forestry workers and boilermakers, will be issued through separate guidance letters by the National Office of Foreign Labor Certification.

The guidance is available at

<http://wdr.doleta.gov/directives/attach/TEGL/TEGL21-06.pdf> . A related Federal Register notice is at

[http://frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?dbname=2007\\_register&position=all&page=19961](http://frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?dbname=2007_register&position=all&page=19961) . The filing tips are at

[http://www.foreignlaborcert.doleta.gov/pdf/H-2B\\_Stakeholder\\_Application\\_Filing\\_Tips\\_050807\\_FINAL1.pdf](http://www.foreignlaborcert.doleta.gov/pdf/H-2B_Stakeholder_Application_Filing_Tips_050807_FINAL1.pdf) . Separate PDFs are available for employers in the entertainment (

[http://www.foreignlaborcert.doleta.gov/pdf/OFLC\\_Briefing\\_May\\_Sessions\\_Entertainers\\_FINAL.pdf](http://www.foreignlaborcert.doleta.gov/pdf/OFLC_Briefing_May_Sessions_Entertainers_FINAL.pdf) ) and forestry (

[http://www.foreignlaborcert.doleta.gov/pdf/OFLC\\_Briefing\\_May\\_Sessions\\_Forestry\\_FINAL1.pdf](http://www.foreignlaborcert.doleta.gov/pdf/OFLC_Briefing_May_Sessions_Forestry_FINAL1.pdf) ) industries. A PDF of the presentation for employers is at

[http://www.foreignlaborcert.doleta.gov/pdf/OFLC\\_Briefing\\_May\\_sessions\\_FINAL.pdf](http://www.foreignlaborcert.doleta.gov/pdf/OFLC_Briefing_May_sessions_FINAL.pdf) .

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## **8. June Visa Bulletin Shows Significant Advances in EB-2 for China, India; All EB-3 Categories**

The current level of demand in many of the employment-based visa categories has been much lower than anticipated. As a result, the Department of State's Visa Office has advanced the June cut-off dates significantly in an effort to maximize number use under the annual numerical limits. The Department said that additional advances during the coming months are likely.

The Department noted that such cut-off date movements should allow for action to be finalized on a significant number of U.S. Citizenship and Immigration Services adjustment of status cases. Once that level of demand begins to exceed the supply of available numbers, it will be necessary to make adjustments to the cut-off dates, and retrogressions are possible.

The June Visa Bulletin is available at

[http://travel.state.gov/visa/frvi/bulletin/bulletin\\_3236.html#bulletin\\_3236.html#](http://travel.state.gov/visa/frvi/bulletin/bulletin_3236.html#bulletin_3236.html#)

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## **9. Lawsuit Threats Discourage Foreign Investment, Top Executives Say**

While lobbying members of Congress, several CEOs of foreign companies invested in the U.S. reportedly said that litigation is a disincentive to conduct business in the U.S. Gary Elliot, chairman and CEO of ThyssenKrupp USA, a German steelmaker that is spending \$3.7 billion to build a plant in Alabama, said litigation "is a major business expense in comparison to Europe." He noted that as a result, insurance costs also are much higher. Zin Smati, president and CEO of SUEZ Energy North America, noted that "once you open plants, you have to factor in the cost of doing litigation." He estimated that each of his company's 50 plants must deal with a lawsuit every 15 months. The CEOs noted, however, other factors that continue to make the U.S. attractive for investment, such as the robust U.S. market and intellectual property controls. The CEOs were in Washington, DC, for a conference organized by the Organization for International Investment (OFII). They met with Treasury Secretary Henry Paulson, Democratic Caucus Chairman Rahm Emanuel (Ill.) and Sens. Trent Lott (R-Miss.) and Jeff Bingaman (D-N.M.).

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## **10. U.S. Consulate in Toronto Announces Minimum Two-Day Wait for Passports**

All stateside visa applicants and those with urgent travel plans now have to wait a minimum of two business days for return of their passports if their visas have been approved. Clients should plan their travel accordingly.

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## **11. State Dept. Publishes Key Officers Directory**

The Department of State has released the latest version of its Telephone Directory, which includes key officers of foreign service posts and contact information, including posts' telephone and fax numbers, business hours, and Web addresses. The directory is available at

<http://www.state.gov/documents/organization/82081.pdf> .

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## **12. Regulation Tracker Enables Searches for Rules, Proposed Rules, and Notices**

Justia Regulation Tracker allows a user to search and track the Federal Register with a drop-down menu of all departments and agencies. A search can be conducted by date or keyword, as well as type of document: rule, proposed rule, notice, administrative or executive order, notice, or proclamation. Users also may browse by government agency.

The Web site also has links to Supreme Court cases and laws, including federal laws and state and local government laws. See

<http://regulations.justia.com/> .

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## **13. CBP Border Patrol Sponsors NASCAR Car**

U.S. Customs and Border Protection's Border Patrol has sponsored a NASCAR Busch Series car to "rev up" its ambitious hiring and recruiting of individuals interested in pursuing a career in border security. The Border Patrol has teamed up with Jay Robinson Racing for a 25-race sponsorship on the #28 Chevy that will run through the remainder of the 2007 NASCAR Busch Series season. The #28 Chevy made its debut with the Border Patrol sponsorship at Darlington Raceway during the Diamond Hill Plywood 200 on May 11, 2007. The announcement is at

[http://www.cbp.gov/xp/cgov/newsroom/news\\_releases/05112007\\_5.xml](http://www.cbp.gov/xp/cgov/newsroom/news_releases/05112007_5.xml) .

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## **14. TPS Extended for Nicaraguans, Hondurans**

During the past year, the Departments of Homeland Security (DHS) and State have continued to review conditions in Nicaragua. They have concluded that an 18-month extension of temporary protected status (TPS), from July 5, 2007, to January 5, 2009, is warranted because there continues to be a substantial, but temporary, disruption of living conditions in Nicaragua resulting from Hurricane Mitch. Although significant progress has been made, Nicaragua remains unable, temporarily, to adequately handle the return of its nationals, as required for TPS designations based on environmental disasters.

DHS has also automatically extended the validity of Employment Authorization

Documents (EADs) for eligible Hondurans and Nicaraguans for six months, through January 5, 2008. This extension is intended to allow sufficient time for eligible TPS beneficiaries to apply for and receive a new EAD without any lapse in employment authorization.

All TPS beneficiaries must comply with the re-registration requirements in order to maintain TPS benefits through January 5, 2009. U.S. Citizenship and Immigration Services noted that information about the re-registration period for Salvadorans "will be forthcoming. Re-registration applications from nationals of El Salvador will not be accepted at this time."

Additional information on the Nicaraguan TPS extension, including a table showing the necessary application forms and fees depending on eligibility, is available at

<http://www.uscis.gov/files/pressrelease/TPSNicExtendQA052907.pdf> .

Additional information on both the Nicaraguan and Honduran extensions is available at

<http://www.uscis.gov/files/pressrelease/TPSHonNicExtend052907.pdf> .

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