



OCTOBER 2014 IMMIGRATION UPDATE

Posted on October 1, 2014 by Cyrus Mehta

Headlines:

1. **State Dept. Releases Instructions on Applying for DV-2016 Program** - Entries for the DV-2016 DV program must be submitted electronically by noon EST (GMT-5), Monday, November 3, 2014.
2. **USCIS Announces New Secure Blue Ink for Many Stamps** - USCIS said employers should be aware of this recent change in secure ink color when [examining acceptable documents](#) presented by employees during the Form I-9 employment eligibility verification process.
3. **USCIS Extends Deferred Enforced Departure for Liberians** - DED Liberia EADs that had an expiration date of September 30, 2014, are now valid through March 30, 2015. This automatic extension of EADs follows President Obama's decision to extend DED through September 30, 2016, for qualified Liberians and those individuals without nationality who last habitually resided in Liberia.
4. **USCIS Extends TPS for Sudan, Redesignates and Extends TPS for South Sudan** - USCIS announced the extension of Sudan for TPS to May 2, 2016, and auto-extension of related employment authorization documents through May 2, 2015. USCIS also announced that it is redesignating South Sudan for TPS and is extending the existing TPS designation through May 2, 2016.
5. **CBP Designates POEs for First-Time Canadian TN, L Applicants Seeking U.S. Entry Under NAFTA** - Such applicants may continue to go to any port of entry (POE) along the Canadian border for processing, but the agency is encouraging such applicants to go to one of the designated POEs "where you will receive optimized processing."
6. **Practitioners Warn About Immigration Scams** - Scammers use a variety of methods. A call demanding money and threatening negative immigration consequences if it's not coughed up immediately is a scam, and those receiving such calls should hang up immediately and not provide any information.
7. **China EB-5 Category Unavailable Through September; Current in October** - The China EB-5 visa category will become "Current" on October 1, 2014.

8. **USCIS Issues Policy Guidance on H-3 Nonimmigrant Trainees** - The new guidance consolidates all previous H-3 guidance addressing circumstances under which a temporary worker may come to the United States as a trainee or as a participant in a special education program.

9. **Firm In The News**

Details:

1. **State Dept. Releases Instructions on Applying for DV-2016 Program**

On September 24, 2014, the Department of State (DOS) released instructions on how to apply for the diversity visa (DV) 2016 program. Entries for the DV-2016 DV program must be submitted electronically at <http://www.dvlottery.state.gov> by noon EST (GMT-5), Monday, November 3, 2014.

The agency warned: "Do not wait until the last week of the registration period to enter, as heavy demand may result in Web site delays. No late entries or paper entries will be accepted." DOS also noted that the law allows only one entry by or for each person during each registration period. DOS said it "uses sophisticated technology to detect multiple entries. Individuals with more than one entry will be disqualified."

For fiscal year 2016, 50,000 diversity visas will be available. There is no cost to register for the DV Program. There are no changes in eligibility this year. For DV-2016, natives of the following countries are not eligible to apply because more than 50,000 natives of these countries immigrated to the United States in the previous five years: Bangladesh, Brazil, Canada, China (mainland-born), Colombia, Dominican Republic, Ecuador, El Salvador, Haiti, India, Jamaica, Mexico, Nigeria, Pakistan, Peru, Philippines, South Korea, United Kingdom (except Northern Ireland) and its dependent territories, and Vietnam.

Persons born in Hong Kong SAR, Macau SAR, and Taiwan are eligible.

The DOS notice states that based on the allocations of available visas in each region and country, individuals will be randomly selected by computer from among qualified entries. All DV-2016 entrants will be required to go to Entrant Status Check using the unique confirmation number saved from their DV-2016 online entry registration to find out whether their entries have been selected in the DV program. Entrant Status Check will be available at <http://www.dvlottery.state.gov> starting May 5, 2015, through at least June 30, 2016.

Those whose entries are selected will be directed to a confirmation page that will provide further instructions, including information on fees connected with immigration to the United States. Entrant Status Check will be the only means by

which selectees will be notified of their selection for DV-2016. The Department of State will not mail out notification letters or notify selectees by email. U.S. embassies and consulates will not provide a list of selectees. DOS noted, "You are strongly encouraged to access Entrant Status Check yourself and not to rely on someone else to check and inform you."

To receive a DV to immigrate to the United States, those who are selected still must meet all eligibility requirements. "These requirements may significantly increase the level of scrutiny required and time necessary for processing for natives of some countries listed in this notice including, but not limited to, countries identified as state sponsors of terrorism," the DOS notice states.

The Federal Register notice with full details is available at <https://www.federalregister.gov/articles/2014/09/24/2014-22767/bureau-of-consular-affairs-registration-for-the-diversity-immigrant-dv-2016-visa-program>.

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2. **USCIS Announces New Secure Blue Ink for Many Stamps**

On July 1, 2014, U.S. Citizenship and Immigration Services (USCIS) began using a new secure *blue* ink for many of its secure stamps. The older secure red ink was retired and is no longer used by USCIS. The following list of stamps are now being done with secure blue ink:

- Department of Homeland Security (DHS) Parole Stamp
- Temporary I-551 Alien Documentary Identification and Telecommunication (ADIT) Stamp
- Refugee Stamp (Section 207)
- Asylum Stamp (Section 208)
- Initial/Replacement Form I-94 Stamp

USCIS said employers should be aware of this recent change in secure ink color when [examining acceptable documents](#) presented by employees during the Form I-9 employment eligibility verification process.

Lists of acceptable documents appear on the last page of the I-9 form. USCIS noted that employers cannot reject an unexpired acceptable document presented by a worker or specify which documents they will accept. The agency reminded employers that they must accept the documents presented by a worker when completing the I-9 as long as those documents appear genuine on their face and relate to the person presenting them.

A bulletin from U.S. Customs and Border Protection with examples of the new stamps is available at http://www.cbp.gov/sites/default/files/documents/20140701_USCIS%20Stamp%20.pdf. Detailed USCIS guidance on how to examine documents for I-9 verification purposes is available at

<http://www.uscis.gov/i-9-central/acceptable-documents/examining-documents>.
USCIS information on acceptable documents is available at
<http://www.uscis.gov/i-9-central/acceptable-documents>.

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3. **USCIS Extends Deferred Enforced Departure for Liberians**

U.S. Citizenship and Immigration Services (USCIS) announced on September 26, 2014, that it will automatically extend employment authorization documents (EADs) for Liberian nationals covered under deferred enforced departure (DED). DED Liberia EADs that had an expiration date of September 30, 2014, are now valid through March 30, 2015. This automatic extension of EADs follows President Barack Obama's decision to extend DED through September 30, 2016, for qualified Liberians and those individuals without nationality who last habitually resided in Liberia.

The six-month automatic extension of existing EADs allows eligible Liberian nationals to continue working in the United States while they file their applications. The extension also gives USCIS time to process and issue the new EADs.

Certain individuals are ineligible for DED, including:

- Individuals who did not have temporary protected status (TPS) on September 30, 2007, and are therefore not covered under current DED;
- certain criminals;
- people subject to the mandatory bars to TPS; and
- those whose removal is in the interest of the United States.

USCIS will publish a notice in the Federal Register with information regarding the extension of EADs for eligible Liberian nationals, and instructions on how they may obtain employment authorization for the remainder of the DED extension.

The USCIS announcement is available at

<http://www.uscis.gov/news/deferred-enforced-departure-extended-liberians>. A related Q&A is available at

<http://www.uscis.gov/news/questions-and-answers/deferred-enforced-departure-extended-liberians-questions-and-answers>. For additional information, see the DED Granted CountryCLiberia webpage on the USCIS webpage at

<http://www.uscis.gov/humanitarian/temporary-protected-status-deferred-enforced>

[-departure/ded-granted-country-liberia/ded-granted-country-liberia.](#)

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4. USCIS Extends TPS for Sudan, Redesignates and Extends TPS for South Sudan

U.S. Citizenship and Immigration Services (USCIS) announced on September 2, 2014, the extension of Sudan for temporary protected status (TPS) to May 2, 2016, and auto-extension of related employment authorization documents (EADs) through May 2, 2015. USCIS also announced that it is redesignating South Sudan for TPS and is extending the existing TPS designation from November 3, 2014, through May 2, 2016.

Sudan. Those who currently have TPS for Sudan and would like to keep that status must re-register by November 1, 2014. USCIS encourages beneficiaries to re-register as soon as possible. Those who have never been granted TPS may be eligible to file a "late initial application. See the "Filing Late" section on the TPS website

(<http://www.uscis.gov/humanitarian/temporary-protected-status-deferred-enforced-departure/temporary-protected-status>) for more information.

As noted above, USCIS has automatically extended the validity of EADs issued under the last extension of TPS Sudan for an additional 6 months, through May 2, 2015. Those who are TPS beneficiaries under the Sudan designation and whose EADs are based on their TPS status with an original expiration date of November 2, 2014, are covered by this automatic extension and may continue to work.

USCIS said that to continue working legally, the following documentation should be shown to employers and government agencies:

- The TPS-related EAD bearing a November 2, 2014, expiration date
- A copy of the Federal Register notice at <http://www.gpo.gov/fdsys/pkg/FR-2014-09-02/html/2014-20709.htm>

USCIS explained that an employer may rely on the Federal Register notice as evidence of the continuing validity of the EAD.

If USCIS approves the TPS re-registration application and the applicant paid the fee for a new EAD (or USCIS approved a fee waiver request), the applicant will be issued a new EAD with the expiration date of May 2, 2016.

South Sudan. During the past year, the Departments of Homeland Security and State reviewed the conditions in South Sudan. Based upon this review, Secretary Johnson determined that a re-designation and 18-month extension of TPS for South Sudan is warranted due to the significant deterioration of conditions in that country and the inability of its nationals to return in safety. The extension and re-designation of South Sudan for TPS are based on ongoing armed conflict in that country and the continuation of extraordinary and temporary conditions that led

to the country's most recent TPS designation in 2013.

Current South Sudanese beneficiaries seeking to extend their TPS status must re-register by November 3, 2014. USCIS encourages beneficiaries to re-register as soon as possible.

South Sudanese nationals, or persons having no nationality who last habitually resided in South Sudan, may be eligible for TPS under the re-designation if they continuously resided in the United States since September 2, 2014, and have been continuously physically present in the United States since November 3, 2014. In addition, applicants must meet all other TPS eligibility and filing requirements.

The 18-month extension allows TPS re-registrants to apply for a new employment authorization document (EAD). Eligible South Sudan TPS beneficiaries who re-register during the 60-day period and request a new EAD will receive one with an expiration date of May 2, 2016. USCIS said it recognizes that some re-registrants may not receive their new EADs until after their current EADs expire. Therefore, USCIS is automatically extending current TPS South Sudan EADs bearing a November 2, 2014, expiration date for an additional six months. These existing EADs are now valid through May 2, 2015.

For more information on eligibility and how to register or re-register for Sudan TPS, see

<http://www.uscis.gov/humanitarian/temporary-protected-status-deferred-enforced-departure/tps-designated-country-sudan/temporary-protected-status-designated-country-sudan>. For South Sudan, see <http://www.uscis.gov/news/dhs-announces-18-month-re-designation-and-18-month-extension-temporary-protected-status-south-sudan>.

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5. CBP Designates POEs for First-Time Canadian TN, L Applicants Seeking U.S. Entry Under NAFTA

U.S. Customs and Border Protection (CBP) is optimizing processing for first-time Canadian TN (Trade NAFTA) and L applicants seeking entry into the United States under the North American Free Trade Agreement (NAFTA). CBP has designated ports of entry (POEs) that will ensure a more efficient approach to processing the high volume of TN and L applicants. CBP explained that such applicants may continue to go to any POE along the Canadian border for processing, but the agency is encouraging such applicants to go to one of the designated POEs "where you will receive optimized processing."

The designated POEs include locations in Canada, Vermont, New York,

Michigan, Washington, and Montana. They are listed at <http://www.cbp.gov/travel/international-visitors/canada-mexico-travel/traveling-tn-or-l-1-visa-canada>.

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6. Practitioners Warn About Immigration Scams

Immigration practitioners are warning each other, companies, and employees to avoid immigration-related scams. Types of scams reported recently include:

- Scammers targeting people based on foreign-sounding names or based on information gathered about companies hiring many H-1Bs. The scammers can get a lot of information from various websites, labor condition application listings from the Department of Labor, LinkedIn, social media, and other sources. Scammers are able to collect information in a variety of ways and use it to convince unwitting victims of their purported authenticity.
- Scammers claiming to be from the Department of Homeland Security or U.S. Citizenship and Immigration Services. They call and state that the victim's paperwork has problems and threaten to deport the victim or to send authorities to the person's home if he or she does not cooperate. They then order the person to go to the nearest convenience store, obtain merchant cards or vouchers for a certain amount of money, and provide the voucher numbers over the phone. Once the scammers obtain the voucher numbers, they disconnect the call and disappear with the victim's money.
- Scammers claiming to be from the Internal Revenue Service, who state that the victim owes back taxes and ordering them to provide merchant card or voucher numbers, then disappearing with the victim's money.
- Scammers who use "Caller ID spoofing" to display a telephone number that is not really their own, and that may appear to be from a legitimate government agency.
- Scammers who send e-mails claiming that the recipient is a Diversity Visa lottery winner and must send in a fee. The Department of State does not send e-mails to applicants.
- Scammers who claim faster processing times or guarantee visas, work authorizations, or green cards, for a fee.

The Alliance of Business Immigration Lawyers notes that government agencies never conduct business in this manner. A call demanding money and threatening negative consequences if it's not coughed up immediately is a scam, and those receiving such calls should hang up immediately and not provide any information. USCIS notes, "USCIS will **not** call you to ask for any form of payment over the phone. Don't give payment over the phone to anyone who claims to be a USCIS official."

Scams can be reported to the Federal Trade Commission at <https://www.ftccomplaintassistant.gov>. See also USCIS's scam information page at <http://www.uscis.gov/avoidscams> to learn where to report scams. USCIS lists common immigration-related scams at <http://www.uscis.gov/avoid-scams/common-scams>. Contact your ABIL attorney for more information or help in particular cases.

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7. China EB-5 Category Unavailable Through September; Current in October

The Department of State's Visa Office announced that the China employment-based fifth (EB-5) category became unavailable on August 23, 2014, and remained unavailable for the remainder of fiscal year 2014. The category again became current on October 1, 2014.

The Department noted that all China EB-5 applicants who had been scheduled for an interview at an overseas post based on the original establishment of the August and September cut-off dates would have been allotted visa numbers for potential use by their case. Such applicants would not be affected by the unavailability of the China EB-5 category for the remainder of FY 2014. In this context, the Department explained, "unavailable" meant that "no additional numbers are available for 'comeback' cases originally scheduled for interview in an earlier month who are now just returning, or for those just requesting an interview at this time." The only exception would be if a post had "otherwise unused" numbers available, the Department noted, because applicants either failed to appear or failed to overcome a refusal during the month (i.e., August or September) of the originally scheduled interview.

The Department said in September that U.S. Citizenship and Immigration Services (USCIS) offices could continue to accept and process China EB-5 cases

and submit them to the Visa Office in the normal manner, based on the cut-off dates announced in the August and September Visa Bulletins. However, instead of being acted upon immediately, those cases were to be held in the Visa Office's "Pending Demand" file and then authorized effective October 1, 2014.

The announcement is available at

<http://travel.state.gov/content/dam/visas/Statistics/Immigrant-Statistics/China%20Employment%20Fifth%20Preference.pdf>.

For CDAM's commentary on adverse impact caused by EB-5 retrogression, see Cyrus Mehta's blog, [Impact Of EB-5 Retrogression On The regional Center Loan Model](#)

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8. USCIS Issues Policy Guidance on H-3 Nonimmigrant Trainees

U.S. Citizenship and Immigration Services (USCIS) announced on September 9, 2014, that it is issuing comprehensive policy guidance on H-3 nonimmigrant trainees in the *USCIS Policy Manual*. The new guidance consolidates all previous H-3 guidance addressing circumstances under which a temporary worker may come to the United States as a trainee or as a participant in a special education program.

The new guidance provides information on the background, purpose, and legal authority for the H-3 program and discusses program requirements, descriptions, restrictions, and forms and documents that must be submitted with an H-3 visa petition.

Among other things, the guidance notes that a training program for a trainee may not be approved if it:

- Deals in generalities with no fixed schedule, objectives, or means of evaluation;
- Is incompatible with the nature of the petitioner's business or enterprise;
- Is on behalf of a trainee who already possesses substantial training and expertise in the proposed field of training;
- Is in a field in which it is unlikely that the knowledge or skill will be used outside the United States;
- Will result in productive employment beyond that which is incidental and necessary to the training;

- Is designed to recruit and train nonimmigrants for the ultimate staffing of domestic operations in the United States;
- Does not establish that the petitioner has the physical plant and sufficiently trained workforce to provide the training specified; or
- Is designed to extend the total allowable period of practical training previously authorized a nonimmigrant student.

The announcement is available at

<http://www.uscis.gov/policymanual/Updates/20140909-Trainees.pdf#>. The

policy guidance is available at

<http://www.uscis.gov/policymanual/HTML/PolicyManual-Volume2-PartI.html>.

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9. Firm In The News

Cyrus D. Mehta and **David Isaacson** along with **Gary Endelman**, published an article in Benders Immigration Bulletin, dated September 15, 2014, entitled *Scialabba v. Cuellar de Osoria: Does the Dark Cloud Have a Silver Lining?*

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