



# JULY 2015 IMMIGRATION UPDATE

*Posted on July 2, 2015 by Cyrus Mehta*

## Headlines:

**[1. U.S. Supreme Court Decides Two Immigration Cases](#)** - The U.S. Supreme Court has decided two immigration cases with potentially far-reaching implications, *Kerry v. Din* and *Mata v. Lynch*.

**[2. Visa, Passport Computer Problems Mostly Resolved](#)** - Among other things, the problems caused delays at the U.S.-Mexico border with seasonal workers being unable to enter the United States.

**[3. USCIS Temporarily Stops Accepting Electronic Versions of Several Forms](#)** - To ensure that the paper and electronic versions of certain forms are consistent with each other, the agency has temporarily remove the current electronic versions until it develops updated forms in the new USCIS online filing system.

**[4. USCIS Proposes Changes to E-Verify](#)** - USCIS seeks public comments on proposed changes to E-Verify.

**[5. North Dakota Joins E-Verify RIDE Program](#)** -North Dakota joins Mississippi, Florida, Idaho, Iowa, and Nebraska in the Records and Information from DMVs for E-Verify (RIDE) Program.

**[6. DHS Announces Temporary Protected Status Designation for Nepal](#)** - The 180-day TPS registration period runs through December 21, 2015.

**[7. DHS Extends Temporary Protected Status Registration Deadline for Liberia, Guinea, Sierra Leone](#)** - DHS is extending the initial registration deadline for TPS to August 18, 2015, for eligible nationals of Liberia, Guinea, and Sierra Leone.

**[8. USCIS Warns DACA Renewal Applicants About Work Permit Expirations](#)** - USCIS noted that some people wait too long to request DACA renewal or do not

correctly submit all the required forms and fees. As a result, their employment authorization documents may expire before USCIS can finish processing their requests. USCIS outlined steps to prevent this from happening.

#### **[9. USCIS Reopens FY 2015 H-2B Cap for Temporary Nonagricultural](#)**

**[Workers](#)** - On June 5, 2015, USCIS reopened the congressionally mandated fiscal year 2015 cap and is accepting petitions requesting new H-2B temporary nonagricultural workers with an employment start date between April 1 and September 30, 2015.

**[10. Green Cards Don't Always Have Signatures, USCIS Reminds](#)** - When the agency issues a green card without a signature, the card will say "Signature Waived" on the front and back of the card where a signature would normally be located.

#### **[11. Agencies Investigate H-1B Outsourcing Firms; Layoffs Provoke](#)**

**[Controversy](#)** - Several companies have been in the spotlight recently due to hiring H-1B workers and laying off U.S. workers in similar positions.

**[12. USCIS Releases Processing Times at International Offices](#)** - On June 9, 2015, USCIS began publishing processing times for certain benefits processed at its international offices and International Operations Division headquarters.

**[13. ABIL Global: United Kingdom](#)** - Far-reaching immigration reforms have been announced following the general election.

#### **[14. Firm In The News](#)**

**Details:**

##### **1. U.S. Supreme Court Decides Two Immigration Cases**

The U.S. Supreme Court has decided two immigration cases with potentially far-reaching implications:

*Kerry v. Din*. Kanishka Berashk is an Afghan who formerly worked in the Taliban-controlled government as a payroll clerk. Due to a terrorism-related statute, he was denied a visa to enter the United States to live with his U.S. citizen spouse, Fauzia Din. The Supreme Court held that because Mr. Berashk is not a U.S. citizen, he had no right to a court review, and his U.S. citizen wife had no due process right to challenge the visa denial in federal court. This left the longstanding doctrine of consular absolutism untouched. The decision is available at

[http://scholar.google.com/scholar\\_case?case=17792974794054210079&hl=en&as\\_sdt=6&as\\_vis=1&oi=scholar](http://scholar.google.com/scholar_case?case=17792974794054210079&hl=en&as_sdt=6&as_vis=1&oi=scholar).

*Mata v. Lynch*. Noel Reyes Mata, an undocumented person from Mexico, was convicted of assault and put in removal proceedings. His original attorneys failed to submit an appeals brief and missed a deadline in filing a motion to reopen. The Supreme Court held that the federal court has jurisdiction to hear his case and decide whether those in removal proceedings can extend their deadlines. The decision is available at

[http://scholar.google.com/scholar\\_case?case=16155766832839896789&hl=en&as\\_sdt=6&as\\_vis=1&oi=scholar](http://scholar.google.com/scholar_case?case=16155766832839896789&hl=en&as_sdt=6&as_vis=1&oi=scholar).

[Back to Top](#)

## **2. Visa, Passport Computer Problems Mostly Resolved**

The Department of State's Bureau of Consular Affairs initially reported on June 12, 2015, technical problems with overseas passport and visa systems. The issue was not specific to any particular country, citizenship document, or visa category. Those problems reportedly were generally resolved by the end of June.

Among other things, the problems caused delays at the U.S.-Mexico border with seasonal workers being unable to enter the United States. Daren Gee, a California strawberry grower, said the delay was costing him \$25,000 to \$30,000 per day in lost revenue because 200 seasonal workers he intended to employ were unable to enter the country. TThe vans are there, the buses are waiting. But we canXt seem to get workers across,Y he said.

Some businesspeople were also unable to obtain passports. David Lummas, who was waiting for his passport in Bangkok, Thailand, so he could continue working for a British multinational company, said, "They are holding my passport so I have been grounded this week from traveling."

The Department of State told the *Wall Street Journal* that 100 technicians were working on the problem, and that it was prioritizing visas for urgent humanitarian cases and agricultural workers.

A State Department announcement about its progress on these problems is available at

<http://travel.state.gov/content/travel/english/news/technological-systems-issue.html>.

The State Department announced that as of June 26, 2015, all visa-issuing embassies and consulates were back online. The State Department is scheduling visa interviews and issuing nonimmigrant and immigrant visas.

[Back to Top](#)

## **3. USCIS Temporarily Stops Accepting Electronic Versions of Several Forms**

On June 15, 2015, U.S. Citizenship and Immigration Services (USCIS) stopped accepting electronically filed Forms I-539, Application to Extend/Change Nonimmigrant Status, and Forms I-526, Immigrant Petition by Alien Entrepreneur. Recently, USCIS also updated the Form I-539 and Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative. USCIS also discontinued the EB-5 Regional Center Document Library.

USCIS said that to ensure that the paper and electronic versions of these forms are consistent with each other, "we must temporarily remove the current electronic versions until we develop these updated forms in our new USCIS online filing system."

USCIS said this change will not adversely affect those who have pending or draft cases that were created before June 15. "We will adjudicate those cases to completion and allow the standard 30 days" for completion or submission of draft cases, USCIS said.

USCIS issued the following instructions:

***Filing a Form I-539 or Form I-526***

*Customers who need to file a Form I-539 or Form I-526 must now file the paper version of the form. If you already started an electronic Form I-539 or Form I-526, you will have 30 days from the day you began your application/petition to complete and submit it online. If you are unable to complete your electronic form within this 30-day time period, you will need to file a new paper application or petition. ¶*

***If You Filed Electronically Before June 15, 2015***

*If you filed a Form I-539 or Form I-526 electronically, you will still be able to access your account to check your case status, change your address, and respond to requests for evidence while USCIS processes your case. If you filed a Form I-526 electronically, you will still be able to review and attest existing deal packages created by the Document Library Manager. However, Document Library Managers will not be able to create new document libraries or deal packages.*

The notice is available at

<http://www.uscis.gov/news/alerts/uscis-discontinues-electronic-form-i-539-for-m-i-526-and-regional-center-document-library>. Instructions on how to file a paper Form I-539 are available at <http://www.uscis.gov/i-539>. Instructions on

how to file a paper I-526 are available at <http://www.uscis.gov/i-526>.

[Back to Top](#)

#### 4. USCIS Proposes Changes to E-Verify

On June 8, 2015, USCIS published a Federal Register notice seeking public comments on proposed changes to E-Verify, including:

- Three proposed enhancements:

***Final Nonconfirmation (FNC)*** Allows employees to contest FNCs that they feel have been issued in error. This will be a new process allowing employees to request a review of their FNCs that will replace the current manual review process.

***Reverification*** Requires employers to use E-Verify to reverify employees whose work authorization has expired. These include employees who were hired before the employer signed the E-Verify Memorandum of Understanding (MOU).

***Updated MOUs*** Revises the E-Verify MOU to support proposed business processes.

- Streamlined Tentative Nonconfirmation (TNC) Processes

*Provides employees with greater access to E-Verify information. USCIS has simplified the TNC process to streamline the notice that an employer provides to the employee. USCIS has also drafted new email messages to communicate directly with the employee regarding Social Security Administration and Department of Homeland Security TNC notices.*

The public will have 60 days to submit comments, until August 7, 2015. To comment, follow the instructions in the Federal Register notice, available at <https://www.federalregister.gov/articles/2015/06/08/2015-13935/agency-information-collection-activities-e-verify-program-revision-of-a-currently-approved>.

Contact E-Verify with questions at

<http://www.uscis.gov/e-verify/customer-support/contact-e-verify>.

[Back to Top](#)

#### 5. North Dakota Joins E-Verify RIDE Program

U.S. Citizenship and Immigration Services (USCIS) announced that North Dakota is the latest state to join the Records and Information from DMVs for E-Verify (RIDE) Program, beginning June 15, 2015. RIDE is an ongoing E-Verify initiative

that links E-Verify with participating state driver licensing agencies in conjunction with the American Association of Motor Vehicle Administrators. RIDE allows E-Verify to validate the authenticity of driver's licenses and state identification cards presented by employees as Form I-9 identity documents. USCIS said that RIDE "helps to reduce document fraud and boosts the accuracy of E-Verify employment eligibility verification."

North Dakota joins Mississippi, Florida, Idaho, Iowa, and Nebraska in this initiative.

A fact sheet on North Dakota's driver's license and ID card information with respect to E-Verify is available at

[http://www.uscis.gov/sites/default/files/USCIS/Verification/E-Verify/E-Verify\\_Native\\_Documents/NorthDakota\\_RIDE-FactSheet.pdf](http://www.uscis.gov/sites/default/files/USCIS/Verification/E-Verify/E-Verify_Native_Documents/NorthDakota_RIDE-FactSheet.pdf). Information on driver's

license verification is available at

<http://www.uscis.gov/e-verify/employers/drivers-license-verification>.

[Back to Top](#)

## **6. DHS Announces Temporary Protected Status Designation for Nepal**

On June 24, 2015, the Department of Homeland Security designated Nepal for temporary protected status (TPS) for 18 months based on conditions resulting from the magnitude 7.8 earthquake that struck Nepal on April 25, 2015, and subsequent aftershocks. As a result, eligible nationals of Nepal residing in the United States may apply for TPS with U.S. Citizenship and Immigration Services (USCIS).

The TPS designation for Nepal will be in effect through December 24, 2016.

During the designated period, eligible nationals of Nepal (and people without nationality who last habitually resided in Nepal) will not be removed from the United States and may receive an employment authorization document (EAD).

The 180-day TPS registration period began June 24, 2015, and runs through December 21, 2015.

To be eligible for TPS, applicants must demonstrate that they satisfy all eligibility criteria, including that they have been both "continuously physically present" and "continuously residing" in the United States since June 24, 2015.

Applicants will also undergo security checks. Those with certain criminal records or who pose a threat to national security are not eligible for TPS.

Applicants may ask USCIS to waive any or all TPS-related fees based on inability to pay by filing Form I-912, Request for Fee Waiver, or by submitting a written request. Fee waiver requests must be accompanied by supporting

documentation. USCIS will reject any TPS application that does not include the required filing fee or a properly documented fee waiver request.

The announcement is available at

<http://www.uscis.gov/news/dhs-announces-temporary-protected-status-designation-nepal>. The related Federal Register notice is available at <http://www.gpo.gov/fdsys/pkg/FR-2015-06-24/html/2015-15576.htm>.

[Back to Top](#)

## **7. DHS Extends Temporary Protected Status Registration Deadline for Liberia, Guinea, Sierra Leone**

The Department of Homeland Security (DHS) is extending the initial registration deadline for temporary protected status (TPS) to August 18, 2015, for eligible nationals of Liberia, Guinea, and Sierra Leone (and people without nationality who last habitually resided in one of those three countries).

DHS began accepting TPS applications on November 21, 2014, from applicants of these three countries. The previous deadline was May 21, 2016. Those who submitted an application for one of these three countries whose applications were previously returned based on the May 20, 2015, deadline may now resubmit a complete application by August 18, 2015.

The announcement is available at

<http://www.uscis.gov/news/temporary-protected-status-registration-period-extended-liberia-guinea-sierra-leone>. Additional details on eligibility and how to register are available at

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

[Back to Top](#)

## **8. USCIS Warns DACA Renewal Applicants About Work Permit Expirations**

U.S. Citizenship and Immigration Services (USCIS) issued a warning on June 15, 2015, to those wishing to renew work permits under the Deferred Action for Childhood Arrivals (DACA) program. USCIS noted that some people wait too long to request renewal or do not correctly submit all the required forms and fees. As a result, their employment authorization documents may expire before USCIS can finish processing their requests for DACA renewal.

USCIS said that renewal applicants can lessen the chance that this may happen by taking the following steps:

- **File on time.** Submit your renewal request between 150 days and 120 days before the expiration date listed on your current Form I-797 DACA approval notice and Employment Authorization Document.
- **Correctly submit all required forms and fees.** USCIS will reject your renewal request unless you properly submit:
  - *Form I-821D, Consideration of Deferred Action for Childhood Arrivals;*
  - *Form I-765, Application for Employment Authorization;*
  - *Form I-765 Worksheet; and*
  - *Required fees of \$465*
- **Avoid processing delays.** Be sure to submit
  - *Any new documents and information related to removal proceedings or criminal history that you have not already submitted to USCIS in a previously approved DACA request;*
  - *Proof of advance parole if you have traveled outside the United States since you filed your last DACA request that was approved; and*
  - *Proof of any legal name change.*
- **Respond to Requests for Evidence.** USCIS may deny your renewal request if you do not respond to a Request for Evidence in a timely manner.

USCIS noted that since March 27, 2015, the agency has been mailing renewal reminder notices to DACA recipients 180 days before the expiration date of their current period of deferred action. Previously, these reminder notices were mailed 100 days in advance. The earlier notices are intended to ensure that DACA recipients are reminded before the start of the recommended renewal period and have sufficient time to prepare their renewal requests.

USCIS said its current goal is to process DACA renewal requests within 120 days. A DACA recipient may submit an inquiry about the status of his or her renewal request after it has been pending more than 105 days.

More information about DACA is available at

<http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-daca>.

[Back to Top](#)

## **9. USCIS Reopens FY 2015 H-2B Cap for Temporary Nonagricultural Workers**



On June 5, 2015, USCIS reopened the congressionally mandated fiscal year (FY) 2015 cap and is accepting petitions requesting new H-2B temporary nonagricultural workers with an employment start date between April 1 and September 30, 2015.

USCIS explained that its role in managing the H-2B cap involves ensuring that enough Form I-129 (Petition for a Nonimmigrant Worker) H-2B petitions with a sufficient number of beneficiaries have been approved to fully subscribe the H-2B cap each year. The agency noted that "it can be difficult to estimate in advance how many beneficiaries of an H-2B petition approved by USCIS will actually seek H-2B status or eventually be issued an H-2B visa" by the Department of State (DOS). USCIS said it "strives to reasonably estimate the number of petitions the agency may approve before the annual cap will be reached."

USCIS said it continues to work in collaboration with DOS to monitor the issuance of H-2B visas. On April 2, 2015, USCIS announced that it had accepted and approved a sufficient number of H-2B petitions to meet the congressionally mandated annual cap of 66,000 H-2B visas. From June 3, 2014, through March 26, 2015, USCIS accepted about 3,900 petitions (about 77,000 beneficiaries) toward the H-2B FY 2015 cap. USCIS initially believed this was sufficient to fully meet the FY 2015 cap. However, USCIS has determined that as of June 5, 2015, DOS received fewer than the expected number of requests for H-2B visas. A recent analysis of DOS H-2B visa issuance and USCIS petition data revealed that the number of actual H-2B visas issued by DOS was substantially less than the number of H-2B beneficiaries seeking consular notification listed on cap-subject H-2B petitions approved by USCIS. In light of this new information, USCIS determined that there were still available H-2B visa numbers remaining for the second half of the FY 2015 cap.

**Filing procedures.** On June 5, 2015, USCIS began accepting additional FY 2015 cap petitions with employment start dates between April 1 and September 30, 2015, and is considering them in the order in which USCIS receives them.

To petition for an FY 2015 H-2B cap number, employers must:

- Submit an I-129 with all required documents, including an approved Temporary Labor Certification (TLC) from the Department of Labor that is valid for the entire employment period stated on the petition.
- Indicate an employment start date between April 1 and September 30,

2015.

USCIS noted that the employment start date listed on the petition must be the same as the employment start date authorized on the TLC unless a petitioner is filing an amended H-2B petition due to the unavailability of originally requested workers as stated on the previously approved TLC. Petitioners may still use TLCs for which the employment start date occurred on or after April 1, 2015, even if the start date occurred during the closure of the FY 2015 H-2B cap. Such TLC, however, must still be otherwise valid, and the employment start date on the petition must match the employment start date authorized on the TLC. Petitions with employment start dates that do not match their TLCs' employment start dates will be rejected and returned with fees, USCIS said. USCIS noted that it will consider petitions received on or after October 1, 2015, and/or requesting a start date on or after that date, toward the FY 2016 H-2B cap. These petitions will be subject to all eligibility requirements for FY 2016 H-2B cap filings. USCIS started accepting FY 2016 H-2B cap petitions on June 3, 2015.

The announcement is available at

<http://www.uscis.gov/news/alerts/uscis-reopen-h-2b-cap-second-half-fiscal-year-2015>.

[Back to Top](#)

## **10. Green Card Don't Always Have Signatures, USCIS Reminds**

U.S. Citizenship and Immigration Services (USCIS) recently issued a reminder that green cards (Permanent Resident Cards) do not always include the holder's signature.

In limited cases, USCIS may waive the signature requirement for certain people, such as children under the age of consent or individuals who are physically unable to provide a signature. Also, since February 2015, USCIS has been waiving the signature requirement for people entering the United States for the first time as lawful permanent residents after obtaining an immigrant visa abroad from a U.S. embassy or consulate.

When the agency issues a green card without a signature, the card will say "Signature Waived" on the front and back of the card where a signature would normally be located.

The announcement is available at

<http://www.uscis.gov/news/alerts/did-you-know-green-card-does-not-always-ha>

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[Back to Top](#)

## **11. Agencies Investigate H-1B Outsourcing Firms; Layoffs Provoke Controversy**

Several companies have been in the spotlight recently due to hiring H-1B workers and laying off U.S. workers in similar positions.

According to reports, the Departments of Labor (DOL) and Justice (DOJ) are investigating several companies for possible labor and immigration law violations. The companies include several Indian outsourcing firms that provided H-1B workers to Southern California Edison (SCE), a power company. The latter company hired Infosys and Tata Consultancy Services to bring in H-1B workers and laid off hundreds of U.S. workers, some of whom said they had to train their replacements.

DOL sent a letter to Rep. Judy Chu (D-Cal.) on June 10, 2015, stating that the agency "has recently opened investigations related to Tata and Infosys' provision of H-1B workers to SCE." DOL also noted in the letter that it had "recently referred allegations concerning SCE and its contractor consultants to the Office of Special Counsel for Immigration-Related Unfair Employment Practices" at DOJ.

Meanwhile, U.S. Citizenship and Immigration Services (USCIS) sent a letter to Rep. Chu dated May 29, 2015, saying the agency was following up on concerns such as those Rep. Chu had raised "regarding to ensure that petitions are entirely consistent with our legal framework." The letter said USCIS would "work with the Department of Labor to review visa petitions and labor condition and certification applications, as appropriate."

The labor condition application (LCA) instructions in ETA Form 9035CP state, among other things, "The employer attests that H-1B, H-1B1 or E-3 foreign workers in the named occupation will not adversely affect the working conditions of workers similarly employed. The employer further attests that nonimmigrants will be afforded working conditions on the same basis, and in accordance with the same criteria, as offered to U.S. workers."

At Disney/ABC Television in New York and Burbank, California, where a reorganization included a plan to lay off U.S. workers and hire H-1B workers, according to reports, Disney subsequently canceled the layoffs. That followed on the heels of several hundred layoffs at Walt Disney World in Orlando, Florida. One laid-off IT worker complained that "ome of these folks were

literally flown in the day before to take over the exact same job I was doing." He said he had trained his replacement.

For a commentary, see *Putting Disner & H1B Visas In*

*Perspective*, <http://blog.cyrusmehta.com/2015/06/putting-disney-and-h-1b-visas-in.html>

[Back to Top](#)

## 12. USCIS Releases Processing Times at International Offices

On June 9, 2015, U.S. Citizenship and Immigration Services (USCIS) began publishing processing times for certain benefits processed at its international offices and International Operations Division headquarters. USCIS said those with cases before USCIS "can use this information to better manage their expectations for when their cases will be processed at USCIS offices. We will update this information every quarter."

The information is available at <https://egov.uscis.gov/cris/ptIntlIntro.do>.

[Back to Top](#)

## 13. ABIL Global: United Kingdom

*Far-reaching reforms have been announced following the general election.*

When the results of the recent general election were tallied, even the victors were surprised when the Conservative Party won sufficient seats in the House of Commons to shed its coalition partner and form a new majority government. Following this success, Prime Minister David Cameron moved swiftly to announce the Tories' new policies and begin implementing a raft of far-reaching reforms.

With regard to immigration, the government intends to:

- introduce a criminal offense for illegal working (the government plans to seize wages as the proceeds of a crime);
- create a government enforcement agency to address the exploitation and coercion of migrant workers;
- make it illegal for employment agencies to recruit solely from abroad without first advertising in English in Britain;
- expand tenant immigration status checks to the national level, while simultaneously making the eviction of undocumented migrant tenants

- easier for landlords;
- ensure that banks take action against accounts of undocumented migrants;
- broaden the scope of "deport first, appeal later" to include nearly all immigration cases;
- implement mandatory electronic "tagging" of migrant offenders who are released on bail; and
- ask the Migration Advisory Committee (MAC) to consult on plans to further reduce migrant labor from outside the European Union, including:
  - financing United Kingdom (UK) apprenticeships via levies on businesses hiring individuals under Tier 2;
  - increasing minimum salary thresholds for migrant workers;
  - restricting how long occupational sectors may claim that they have a skills shortage;
  - limiting work visas to specialist experts and areas with skills shortages; and
  - restricting Tier 2 dependents' right to work.

In anticipation of the promised "in-out" referendum by 2017 on whether the UK should remain a member of the EU, Prime Minister Cameron also took the first steps toward renegotiating the terms of the UK's relationship with the EU. Alongside other, broader changes he is proposing, and in an effort to curb migration from the European continent, Cameron hopes to restrict EU migrants' access to social welfare benefits in the UK. While some of these terms may be possible, EU leaders have made it clear that free movement is not up for negotiation.

At present, however, an overwhelming majority of Britons do not believe that Mr. Cameron's negotiations will be effective. Notwithstanding this pessimism, polls suggest that 44% of British citizens favor remaining in the EU (with 36% hoping to leave, and 17% still undecided). That said, as the pollsters and pundits were nearly universally incorrect in their general election forecasts, no result should at this point be seen as a foregone conclusion.

[Back to Top](#)

#### 14. Firm In the News

**Cyrus Mehta** was a Speaker on the following panels: Speaker on the following

panels: 1) *Immigration and Health Care: Everything You Need to Know About How the Affordable Care Act Impacts Your Clients*; 2) *AILA Ethics Compendium Live* and 3) *Beyond Deferred Action – Is Permanent Residence An Option?* 2015 AILA Annual Conference on Immigration Law, Washington DC at National Harbor, June 17-20, 2015.

**Mr. Mehta** was interviewed on CNBC in a segment about skilled foreign workers and H-1B visas. The video is available at <http://video.cnbc.com/gallery/?video=3000386272>.

**David Isaacson** was a Speaker on the panel: *Has CSPA Aged-out?* 2015 AILA Annual Conference on Immigration Law, Washington DC at National Harbor, MD, June 17-20, 2015.

[Back to Top](#)