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US IMMIGRATION & NATIONALITY LAW

SEPTEMBER 2015 IMMIGRATION UPDATE

Posted on September 1, 2015 by Cyrus Mehta

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1. **New L-1B Memo Addresses Some Issues, But Concerns Remain** **-** Some practitioners expressed concerns that the memo still gives adjudicators broad discretion to issue RFEs and denials.

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4. **Federal Prosecutors Drop Criminal Case Based on Evidence Seized From Laptop** **-** Prosecutors told the U.S. Court of Appeals for the D.C. Circuit that they would not pursue the criminal case or challenge a U.S. District judge's May ruling that the evidence, seized from a laptop without a warrant at the Los Angeles airport, could not be used.

5. **DHS Announces Security Enhancements to Visa Waiver Program** **-** DHS, along with the Department of State and some other federal agencies, will introduce a number of additional or revised security criteria for all VWP participants.

6. **Canada Introduces New Entry Requirement for Some Visa-Exempt Foreign Nationals Traveling by Air** **-** Canada has introduced a new entry requirement, known as Electronic Travel Authorization (eTA), for certain visa-exempt foreign nationals traveling to Canada by air, not including U.S. citizens.

7. District Court Strikes Down DHS Rule Extending STEM OPT, But Stays Action Until 2016 - The court struck down a 2008 interim rule extending the duration of STEM OPT by 17 months but stayed that action until February 12, 2016, to avoid disruption and allow DHS to submit the rule for notice and comment.

8. GAO Calls for Better Assessment of Fraud Risks, Economic Benefits From EB-5 Program - The GAO noted that fraud risks are constantly evolving and that USCIS continually identifies new fraud schemes, but the agency does not have documented plans to conduct regular future risk assessments.

9. Senate Holds Hearing on Obama Administration's Executive Actions - The hearing followed the White House's announcement on July 15, 2015, of progress on the Obama administration's executive actions on immigration and next steps, as part of an effort begun in November 2014 to address problems in the U.S. immigration system through a series of executive actions.

10. USCIS Accounts for Returns of Erroneously Issued DACA EADs - USCIS said it has accounted for over 99 percent of the approximately 2,600 identified invalid work permits requiring return.

11. TPS Registration Deadline Was August 18 for Liberia, Guinea, Sierra Leone - The TPS designations for these three countries run through May 21, 2016.

12. USCIS Summarizes Temporary Immigration Relief Measures for Marianas - USCIS reminded people affected by Typhoon Soudelor that certain U.S. immigration benefits or relief may be available to them.

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Details:

1. New L-1B Memo Addresses Some Issues, But Concerns Remain

A new L-1B policy memorandum issued by U.S. Citizenship and Immigration Services (USCIS) provides guidance on the adjudication of the L-1B classification, which permits multinational companies to transfer employees who possess "specialized knowledge" from their foreign operations to their operations in the United States. It provides consolidated and authoritative guidance on the L-1B

program, superseding and rescinding certain prior L-1B memoranda. Some practitioners expressed concerns that the memo still gives adjudicators broad discretion to issue requests for evidence (RFEs) and denials.

The memo notes the following "non-exhaustive" list of factors USCIS may consider when determining whether a beneficiaryXs knowledge is specialized:

- The beneficiary possesses knowledge of foreign operating conditions that is of significant value to the petitioning organization's U.S. operations.
- The beneficiary has been employed abroad in a capacity involving assignments that have significantly enhanced the employer's productivity, competitiveness, image, or financial position.
- The beneficiary's claimed specialized knowledge normally can be gained only through prior experience with the petitioning organization.
- The beneficiary possesses knowledge of a product or process that cannot be easily transferred or taught to another individual without significant economic cost or inconvenience (because, for example, such knowledge may require substantial training, work experience, or education).
- The beneficiary has knowledge of a process or a product that either is sophisticated or complex, or of a highly technical nature, although not necessarily unique to the petitioning organization.
- The beneficiary possesses knowledge that is particularly beneficial to the petitioning organization's competitiveness in the marketplace.

The memo notes that specialized knowledge generally cannot be commonly held, lacking in complexity, or easily imparted to other individuals. Specialized knowledge need not be proprietary or unique to the petitioning organization. The memo also notes that the L-1B classification does not involve a test of the U.S. labor market, and that specialized knowledge workers need not occupy managerial or similar positions or command higher compensation than their peers.

The memo, issued August 17, 2015, is available at http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2015/L-1B_Memorandum_8_14_15_draft_for_FINAL_4pmAPPROVED.pdf.

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2. USCIS Discontinues Legacy E-Filing System

U.S. Citizenship and Immigration Services (USCIS) recently announced that it is discontinuing its legacy "e-Filing" system to maintain data security standards and focus resources on a replacement Electronic Immigration System.

The legacy e-Filing system offered online filing for several USCIS forms. After the legacy system is decommissioned and before the new system is fully operational, applicants must use paper forms when filing all categories of:

- Form I-131, Application for Travel Document
- Form I-140, Immigrant Petition for Alien Worker
- Form I-765, Application for Employment Authorization
- Form I-821, Application for Temporary Protected Status
- Form I-907, Request for Premium Processing Service

The last day to start new forms in the e-Filing system was August 30, 2015. Applicants must complete and submit all forms by September 20, 2015, or file a paper form. Those who have a pending case submitted through the legacy e-Filing system do not need to take any action. USCIS said it will adjudicate those cases to completion.

USCIS noted that the forms being removed from the legacy e-Filing system will not be available immediately in the new Electronic Immigration System, but the agency plans to add them in the future. USCIS did not indicate when the new system would be fully implemented.

The USCIS announcement is at http://www.uscis.gov/uscis-elis/uscis-discontinues-legacy-e-filing-system.

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3. DHS Extends TPS Designation for Haiti by 18 Months

The Department of Homeland Security has extended Haiti's temporary protected status (TPS) designation for an additional 18 months, through July 22, 2017.

Current TPS Haiti beneficiaries seeking to extend their TPS status must re-register during a 60-day period that began on August 25, 2015, and runs through October 26, 2015. U.S. Citizenship and Immigration Services (USCIS) is encouraging beneficiaries to re-register as soon as possible.

The 18-month extension also allows TPS re-registrants to apply for a new employment authorization document (EAD). Eligible TPS Haiti beneficiaries who re-register during the 60-day period and request a new EAD will receive one with an expiration date of July 22, 2017. 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 Haiti EADs bearing a January 22, 2016, expiration date for an additional six months. These existing EADs are now valid through July 22, 2016.

Haiti was initially designated for TPS on January 21, 2010, after a major earthquake devastated the country. Following consultations with other federal agencies, DHS determined that current conditions in Haiti support extending the designation period for current TPS beneficiaries.

To re-register, current TPS beneficiaries must submit:

- Form I-821, Application for Temporary Protected Status (re-registrants do not need to pay the I-821 application fee);
- The biometric services fee (or a fee waiver request) if they are 14 years old or older;
- Form I-765, Application for Employment Authorization, regardless of whether they want an EAD; and
- The Form I-765 application fee, or a fee waiver request, but only if they want an EAD. If the re-registrant does not want an EAD, no application fee is required.

Applicants may ask USCIS to waive the I-765 application fee and/or biometrics fee based on an inability to pay. To do so, applicants must file Form I-912, Request for Fee Waiver, or submit a written request. Fee waiver requests must be accompanied by supporting documentation.
The Federal Register notice announcing the extension is at http://www.gpo.gov/fdsys/pkg/FR-2015-08-25/html/2015-21006.htm.

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4. Federal Prosecutors Drop Criminal Case Based on Evidence Seized From Laptop

Federal prosecutors have dropped a criminal case against Jae Shik Kim, a Korean

businessman, who was charged with violating economic sanctions based on evidence seized from his laptop. On August 11, 2015, prosecutors told the U.S. Court of Appeals for the D.C. Circuit that they would not pursue the criminal case or challenge an order U.S. District Judge Amy Berman Jackson made in May ruling that the evidence, seized without a warrant at the Los Angeles airport, could not be used.

Judge Jackson had noted, " Given the vast storage capacity of even the most basic laptops, and the capacity of computers to retain metadata and even deleted material, one cannot treat an electronic storage device like a handbag simply because you can put things in it and then carry it onto a plane." Jeff Ifrah, one of Kim's lawyers, speculated that the federal government didn't appeal the decision because it "could have resulted in some bad precedent about the type of searches that are going on every day at airports. I think they donXt want to be responsible for having a circuit court of appeals rule that those searches are illegal." He called the case "clearly a violation of the Fourth Amendment."

Judge Jackson's May 2015 order is at https://cdn.arstechnica.net/wp-content/uploads/2015/05/kimruling.pdf.

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5. DHS Announces Security Enhancements to Visa Waiver Program

On August 6, 2015, Department of Homeland Security (DHS) Secretary Jeh C. Johnson announced the agency's intent to implement security enhancements to the Visa Waiver Program (VWP). He said that DHS, along with the Department of State and other federal agencies, will begin introducing "a number of additional or revised security criteria" for all VWP participants, to apply to both new and current members of the program. The VWP currently has 38 participating countries.

Most significant among the new security requirements, he said, would be required use of e-passports for all VWP travelers coming to the United States; required use of the INTERPOL Lost and Stolen Passport Database to screen travelers crossing a VWP country's borders; and permission for the expanded use of U.S. federal air marshals on international flights from VWP countries to the United States.

U.S. Customs and Border Protection (CBP) has noted that DHS is concerned about the risks posed by the situation in Syria and Iraq, where increasing instability has

attracted thousands of foreign fighters, including many from VWP countries. Such individuals could travel to the United States for operational purposes on their own or at the behest of violent extremist groups in Syria, CBP warned. Among other things, DHS has expanded the amount of information collected by its Electronic System for Travel Authorization (ESTA).

Secretary Johnson's statement is available at http://www.dhs.gov/news/2015/08/06/statement-secretary-jeh-c-johnson-intention-implement-security-enhancements-visa. The CBP announcement is at http://www.cbp.gov/travel/international-visitors/esta/enhancements-to-esta-faqs.

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6. Canada Introduces New Entry Requirement for Some Visa-Exempt Foreign Nationals Traveling by Air

As of August 1, 2015, Canada has introduced a new entry requirement, known as Electronic Travel Authorization (eTA), for certain visa-exempt foreign nationals traveling to Canada by air. Exceptions include U.S. citizens and travelers with valid visas. Entry requirements for other methods of travel (e.g., land, sea) have not changed.

Eligible travelers can apply online for an eTA. On March 15, 2016, this entry requirement will become mandatory and such travelers will need an eTA before they can board a flight to Canada.

For more information or to apply for an eTA, see http://www.cic.gc.ca/english/visit/eta.asp?utm_source=partner-eng&utm_medium=website&utm_campaign=eta.

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7. District Court Strikes Down DHS Rule Extending STEM OPT, But Stays Action Until 2016

The U.S. District Court for the District of Columbia recently struck down an interim rule promulgated by the Department of Homeland Security (DHS) in April 2008 extending, for eligible science, technology, engineering, and mathematics (STEM) students, the duration of optional practical training (OPT) by 17 months. However, the court stayed that action until February 12, 2016, to avoid disruption and allow DHS to submit the rule for notice and comment.

The plaintiff, Washington Alliance of Technology Workers, a collective-bargaining

organization that represents STEM workers, had challenged the interim rule. The complaint alleged, among other things, that the plaintiff's members who had technology-related degrees in the computer programming field and had applied for STEM employment were in direct and current competition with OPT students on a STEM extension.

OPT allows a nonimmigrant foreign national on an F-1 student visa to engage in employment during and after completing a course of study at a U.S. educational institution. When DHS published the interim rule, the agency explained that OPT employees often are unable to obtain H-1B status within their authorized period of stay in F-1 status, including the 12-month OPT period, and thus are forced to leave the United States. "The inability of U.S. employers, in particular in the fields of science, technology, engineering and mathematics, to obtain H-1B status for highly skilled foreign students and foreign nonimmigrant workers has adversely affected the ability of U.S. employers to recruit and retain skilled workers and creates a competitive disadvantage for U.S. companies," DHS said.

The court vacated the 17-month STEM extension described in the interim rule at 73 Fed. Reg. 18944 (Apr. 8, 2008), but stayed the vacatur until February 12, 2016, and remanded to DHS for further proceedings. The court concluded that immediate vacatur of the 2008 rule would be "seriously disruptive," noting that in 2008, DHS estimated that there were approximately 70,000 F-1 students on OPT and that one-third had earned degrees in a STEM field. While DHS has not disclosed the number of people currently taking advantage of the OPT STEM extension, the court said it had no doubt that vacating the 2008 rule would force thousands of foreign students with work authorizations to scramble to depart the United States Vacating the 2008 rule could also impose a costly burden on the U.S. tech sector, the court noted, if thousands of young workers have to leave their jobs quickly. The court said it saw no way of immediately restoring the pre-2008 status quo without causing substantial hardship for foreign students and a major labor disruption for the technology sector. As such, the court ordered that the vacatur be stayed until February 12, 2016, "during which time DHS can submit the 2008 Rule for proper notice and comment."

The decision is at http://irli.org/wp-content/uploads/2015/08/2015.8.12-Memo-Opin.pdf.

For a commentary, See Cyrus D. Mehta, *Opportunity Knocks In Disappointing Decision Vacating STEM Optional Practical Training Rule For Foreign Students*

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8. GAO Calls for Better Assessment of Fraud Risks, Economic Benefits From EB-5 Program

The U.S. Government Accountability Office (GAO) recently released a report that calls for additional actions to better assess fraud risks and report economic benefits in the EB-5 program. The GAO noted that fraud risks are constantly evolving and that U.S. Citizenship and Immigration Services (USCIS) continually identifies new fraud schemes, but the agency does not have documented plans to conduct regular future risk assessments.

Among other things, fraud risks previously identified include uncertainties about whether invested funds are obtained lawfully and various investment-related schemes to defraud investors. The GAO noted that USCIS has taken steps to address fraud risks by enhancing its fraud risk management efforts, including establishing a dedicated entity to oversee these efforts. However, USCIS's information systems and processes limit its ability to collect and use data on EB-5 program participants to address fraud risks. The GAO noted that USCIS plans to collect and maintain more complete data in its new information system; however, the GAO reported in May 2015 that the new system is nearly four years delayed. In the meantime, USCIS does not have a strategy for collecting additional information, including some information on businesses supported by EB-5 program investments, that officials noted could help mitigate fraud, such as misrepresentation of new businesses. Given that information system improvements with the potential to expand USCIS's fraud mitigation efforts will not take effect until 2017 at the earliest and that gaps exist in USCIS's other information collection efforts, developing a strategy for collecting such information would better position USCIS to identify and mitigate potential fraud, the GAO said.

The GAO noted that USCIS increased its capacity to verify job creation by increasing the size and expertise of its workforce and providing clarifying guidance and training, among other actions. However, the GAO said that USCIS's methodology for reporting program outcomes and overall economic benefits "is not valid and reliable because it may understate or overstate program benefits in certain instances" because it is based on the minimum program requirements of 10 jobs and a $500,000 investment per investor instead of the number of jobs and investment amounts collected by USCIS on

individual EB-5 program forms. For example, the GAO noted, USCIS reported 4,500 jobs for 450 investors on one project using its methodology instead of 10,500 jobs reported on EB-5 program forms for that project. Further, investment amounts are not adjusted for investors who do not complete the program or invest $1 million instead of $500,000. USCIS officials said they were not statutorily required to develop a more comprehensive assessment. However, tracking and analyzing data on jobs and investments reported on program forms would better position USCIS to more reliably assess and report on the EB-5 program's economic benefits, the GAO said.

The report, "Immigrant Investor Program: Additional Actions Needed to Better Assess Fraud Risks and Report Economic Benefits" (GAO-15-696), is available at http://www.gao.gov/products/GAO-15-696.

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9. **Senate Holds Hearing on Obama Administration's Executive Actions**

The U.S. Senate Committee on the Judiciary held a hearing on July 21, 2015, "Oversight of the Administration's Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims." The hearing followed the White House's announcement on July 15, 2015, of progress on the Obama administration's executive actions on immigration and next steps, as part of an effort begun in November 2014 to address problems in the U.S. immigration system through a series of executive actions.

Those testifying at the hearing included U.S. Citizenship and Immigration Services (USCIS) Director Leon Rodriguez; Grace Huang, Public Policy Coordinator, Washington State Coalition Against Domestic Violence; J. Thomas Manger, Chief of Police, Montgomery County (Maryland) Police Department; Sarah Saldaña, Assistant Secretary, U.S. Immigration and Customs Enforcement; and others. Judiciary Committee members Charles Grassley (R-IA) and Patrick Leahy (D-VT) submitted statements.

In his opening statement, Sen. Grassley said that the Obama administration, "in too many cases, has turned a blind eye to enforcement, even releasing thousands of criminals at its own discretion, many of whom have gone on to commit serious crimes, including murder." He also said that the administration has granted deferred action "to criminal aliens who have committed heinous crimes after receiving this relief from deportation." Sen. Grassley noted that he

has written to Homeland Security Secretary Jeh Johnson about four specific cases in which such individuals received Deferred Action for Childhood Arrivals (DACA). "One of those beneficiaries was a known gang member when he applied and received DACA, then went on to kill four people in North Carolina. Another DACA recipient used his work authorization to gain employment at a popular youth camp in California, where he was recently arrested for child molestation, and distribution of child pornography. I am still waiting for responses on some of these cases," Sen. Grassley said.

Sen. Leahy noted that immigrants are statistically less likely than individuals born in the United States to commit crimes, and said crimes by certain people "should not be used as an excuse for demonizing an entire community." He also noted that the Obama administration "has committed unprecedented resources to enforcement efforts at the border and in the interior," spending nearly $18.5 billion per year on enforcement, "which exceeds all other federal criminal law enforcement spending combined." The Obama administration, he noted, has removed more individuals than any other administration.

Mr. Rodriguez summarized key executive actions on immigration issues, including DACA. He noted, among other things, that through the end of March 2015, USCIS had received 1,175,689 DACA requests, and rejected and returned more than 71,000 at the outset. Of the 1,104,594 DACA requests accepted by USCIS for consideration, 748,789 were initial requests and 355,805 were renewal requests. Of the initial requests, USCIS approved 664,607 and denied 43,375; 40,807 remained pending as of the hearing date. Of the renewal requests, USCIS approved 243,872 and denied 414; 111,519 remained pending as of the hearing date. Mr. Rodriguez noted that denials may occur when a DACA requestor does not meet the continuous residence or education guidelines, is deemed to pose a threat to national security or public safety, or is otherwise deemed not to warrant deferred action based on a case-by-case review of each application.

He noted that these figures "do not illustrate the human face of DACA." He noted, for example, the situation of twin sisters who were born in Mexico. Their mother brought them to the United States when they were five years old. The sisters therefore spent most of their childhood in the United States, but did not know if they could ever go to college because they were undocumented. They received DACA and went on to graduate from high school with honors and are now attending a prestigious college. They have said they are committed to

working hard so they can give back to the university and the nation. Mr. Rodriguez said they are two of many examples of young people who are now able to fully contribute to their communities and to the nation because they can "finally emerge from the shadows, and give back to the community." He noted that DACA is part of a greater effort to ensure that valuable and limited enforcement resources "are spent wisely and focused on those individuals who are a danger to national security or a risk to public safety" rather than on people such as the twin sisters he described.

Mr. Rodriguez also noted that when the district court issued a preliminary injunction in *Texas v. United States*, USCIS ceased preparations to implement the new DACA eligibility guidelines and Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA). USCIS also took immediate steps intended to ensure that the agency ceased issuing three-year (rather than two-year) periods of deferred action and work authorization to DACA recipients processed under the 2012 memorandum (a change that had begun, as directed by the memorandum, on November 24, 2014). He noted that between November 24, 2014, and the date of the injunction, USCIS granted approximately 108,000 three-year employment authorization documents (EADs) to renewal and initial requestors who were granted deferred action under the 2012 DACA guidelines. He said that the vast majority of these requests were filed before issuance of the 10 memoranda on November 20, 2014, announcing the executive actions. He said the large number of requests and decisions during this period reflected the natural cycle of DACA renewals, as the initial two-year periods of deferred action and work authorization were expiring for those persons who were granted DACA during the initial months after its launch in 2012.

He acknowledged that USCIS failed to prevent the release of approximately 2,000 three-year EADs for individuals eligible for 2012 DACA once the agency's initial February 17 freeze on all EADs was lifted, and thereafter erroneously issued a small number of three-year EADs due to "manual errors." In addition, he said, USCIS re-mailed some three-year EADs (approximately 500) that had initially been mailed before the injunction, were returned by the U.S. Postal Service as undeliverable, and were re-mailed by USCIS after the injunction.

Mr. Rodriguez said that as the director of USCIS, "I accept full responsibility for these mistakes." He noted that the Secretary of Homeland Security has asked the DHS Office of Inspector General (OIG) to investigate the circumstances of

the issuance of the approximately 2000 three-year EADs after the issuance of the preliminary injunction order. "USCIS fully supports this investigation, and like Secretary Johnson, I have notified agency leadership and relevant staff components directing full and expedited cooperation with the OIG," he said.

He also said that USCIS has implemented corrective measures, including the conversion of all the validity periods of deferred action and employment authorization to two years, and that the agency is issuing new two-year EADs for each of the 2,000 erroneously issued three-year EADs, as well as those approximately 500 returned as undeliverable. USCIS notified those individuals who received the now-invalid three-year EADs that their deferred action and employment authorization would be terminated on July 31, 2015, if those individuals did not comply with the requirements for returning the invalid EADs. Additionally, Mr. Rodriguez directed the agency to take additional precautions, "including the modification of USCIS computer systems and additional quality control measures to further minimize the potential for manual error that could lead to unintended issuance of three-year EADs, instead of two years, in future DACA cases," he said.

Testimony statements of all the witnesses at the hearing are at http://www.judiciary.senate.gov/meetings/oversight-of-the-administrations-misdirected-immigration-enforcement-policies-examining-the-impact-on-public-safety-and-honoring-the-victims.

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10. **USCIS Accounts for Returns of Erroneously Issued DACA EADs**

U.S. Citizenship and Immigration Services (USCIS) issued an update on August 5, 2015, regarding returns of erroneously issued employment authorization documents (EADs) with more than two years of validity issued after February 16, 2015, to certain Deferred Action for Childhood Arrivals (DACA) recipients. This was after a court order was in place prohibiting the agency from conferring DACA for more than two years. After the court order in *Texas v. United States*, USCIS can approve deferred action requests and related employment authorization applications based on DACA only for two-year periods.

USCIS said it accounted for over 99 percent of the approximately 2,600 identified invalid work permits requiring return. Twenty-two of the approximately 2,600 recipients failed to return their work permits or certify

good cause for not doing so by the deadline of July 30, 2015. As a result, USCIS terminated DACA for those 22 people.

USCIS noted that the recall only applied to some individuals who received a card after the February 16, 2015, court order; there are approximately 108,000 individuals who have valid three-year DACA work permits and do not need to return them. USCIS said that those who were affected by the recall and returned their invalid three-year work permits should use Case Status Online to verify whether USCIS received the work permit.

Those who returned their cards but their DACA and work authorization was terminated should either call USCIS at 1-800-375-5283, select option 1 for English, then option 8; or visit their local USCIS field offices between 9 a.m. and 3 p.m. Monday through Friday.

Case Status Online is available at https://egov.uscis.gov/casestatus/landing.do. A related "quick facts" sheet is at http://www.uscis.gov/humanitarian/daca-recipients-who-received-3-year-work-permit-post-injunction-quick-facts. The USCIS letter sent July 14 to affected DACA recipients is at http://www.aila.org/File/Related/15070802g.pdf. USCIS' July 27 announcement is at http://www.uscis.gov/news/urgent-some-daca-recipients-who-received-three-year-work-permits-must-return-them-immediately.

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11. **TPS Registration Deadline Was August 18 for Liberia, Guinea, Sierra Leone**

August 18, 2015, was the deadline for eligible nationals of Liberia, Guinea, and Sierra Leone (and people without nationality who last habitually resided in one of those three countries) to register for temporary protected status (TPS). The deadline marked the end of the 90-day extension of the initial registration period, U.S. Citizenship and Immigration Services (USCIS) said in a reminder. The TPS designations for these three countries began on November 21, 2014, and run through May 21, 2016.

Eligibility criteria include having been "continuously residing" in the United States since November 20, 2014, and having been "continuously physically present in" the United States since November 21, 2014. Eligible persons also must undergo security checks. Those with certain criminal records or who pose

a threat to national security are not eligible for TPS.

Liberian nationals currently covered under the two-year extension of deferred enforced departure (DED) based on President Obama's September 26, 2014, are eligible for TPS. Liberians under DED who have an employment authorization document (EAD) or have applied for an EAD do not need to apply for another EAD related to this TPS designation. However, those who are granted TPS may request a TPS-related EAD at a later date as long as the TPS designation for Liberia remains in effect.

The TPS announcement is also available in French at http://www.uscis.gov/news/la-date-decheance-de-linscription-au-tps-pour-le-liberia-la-guinee-et-la-sierra-leone-est-le-18-aout-2015. Additional information about TPS for Liberia, Guinea, and Sierra Leone, including guidance on eligibility, the application process and where to file, is at http://www.uscis.gov/humanitarian/temporary-protected-status-deferred-enforced-departure/temporary-protected-status. The September 2014 presidential memorandum on DED is at https://www.whitehouse.gov/the-press-office/2014/09/26/presidential-memorandum-deferred-enforced-departure-liberians.

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12. **USCIS Summarizes Temporary Immigration Relief Measures for Marianas**

U.S. Citizenship and Immigration Services (USCIS) recently reminded people affected by Typhoon Soudelor, which caused extensive damage in the Commonwealth of the Northern Mariana Islands (CNMI) on August 2, 2014, that certain U.S. immigration benefits or relief may be available to them. USCIS said it understands that a natural disaster can affect an individual's ability to maintain lawful immigration status or obtain certain other immigration benefits.

Eligible individuals may request or apply for temporary relief measures, including:

- A change or extension of nonimmigrant status for an individual currently in the United States, even when the request is filed after the authorized period of admission has expired;

- Extension or re-parole of individuals previously granted parole by USCIS;
- Expedited adjudication of employment authorization applications; and
- Assistance to lawful permanent residents (LPRs) stranded overseas without immigration or travel documents, such as permanent resident cards (green cards). USCIS and the Department of State will coordinate on these matters when LPRs are stranded in a place that does not have a local USCIS office.

USCIS noted that the agency "may also exercise its discretion to allow for filing delays resulting from the typhoon." This may include, for example:

- Assistance to those who have not appeared for an interview or submitted required forms of evidence. USCIS noted, "You may show how the typhoon prevented you from appearing or submitting documents as required"; or
- Assistance to those who have not been able to respond to a request for evidence (RFE) or notice of intent to deny (NOID). USCIS said it will extend the deadline for individuals to respond to RFEs or NOIDs by 30 days. This applies to all RFEs and NOIDs with a deadline of August 2 through September 2, 2015. During this time, USCIS said it "will not issue denials based on abandonment of an application or petition in the CNMI."

USCIS will continue to monitor the situation and will provide updated guidance as needed. The announcement is at http://www.uscis.gov/news/alerts/temporary-immigration-relief-measures-available-individuals-affected-typhoon-soudelor. The agency referred people to http://www.uscis.gov/humanitarian/special-situations for more information on "special situations."

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13. **ABIL Global: Canada**

Canada introduces new immigrant investor venture capital pilot program.

In January 2015, Citizenship and Immigration Canada (CIC) introduced a new *Immigrant Investor Venture Capital (IIVC) Pilot Program* to attract experienced business immigrants who can actively invest in the Canadian economy and thereby stimulate innovation, economic growth, and job creation.

Applicants must have a minimum personal net worth of **CDN $10 million and**

make an at-risk investment of **CDN $2 million** in the IIVC Fund, which will be held for 15 years. Also, the applicant must: prove his or her proficiency in English or French in all four language abilities (speaking, reading, listening, and writing).

Canadian post-secondary degree, diploma, or certificate of at least one year or a foreign equivalent. However, if the applicant is able to demonstrate that he or she has a personal net worth of $50 million or more acquired through lawful, private sector business or investment activities, the applicant may request an exemption from the education requirement.

Since its inception, there have been a number of closures and re-openings under the IIVC program. The most recent re-opening of the program took place in May 2015.

CIC will accept applications until December 30, 2015, and will process the first 60 complete applications. CIC will also accept up to 60 additional applications that will be placed on a waiting list. The program may close earlier if 60 immigrant investors are approved for permanent residence, or once 60 applications are in process and 60 applications are on the waiting list.

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14. **Firm In The News**

Cyrus Mehta was a Discussion Leader, *Protecting Your EB-5 Practice: Ethical Issues & Minimizing Risk*, 2015 EB-5 Investors Summit: Representing EB-5 Investors & Regional Centers In A Time Of Change, AILA, Las Vegas, NV, August 27-28, 2015.

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