



MID-JANUARY 2016 IMMIGRATION UPDATE

Posted on January 18, 2016 by Cyrus Mehta

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1. [House Holds Oversight Hearings on USCIS, EOIR](#) – Leon Rodriguez, USCIS Director, testified at the USCIS hearing. Juan Osuna, EOIR Director, testified at the EOIR hearing.
2. [Visa Bulletin Notes Statistics on Applicants in Limited Immigrant Categories for Consular Processing](#) – The Department of State's Visa Bulletin for February 2016 notes that the National Visa Center has provided totals of applicants registered in the various numerically limited immigrant categories for processing at consular posts as of November 1, 2015.
3. [USCIS Issues Reminder About Immigration Relief Measures for Victims of Severe Weather](#) – USCIS issued a reminder about immigration relief measures "that may help people affected by unforeseen circumstances, such as the recent severe weather and flooding in areas of the Southern and Midwestern United States."
4. [SCIS Updates Request for Premium Processing Service Form](#) – The new edition is dated 12/11/15. The 01/29/15 version will also still be accepted.
5. [DHS Secretary Releases Statement on Southwest Border Security in Light of Removals](#) – As part of recent operations, DHS Secretary Johnson said, 121 individuals were taken into custody, primarily from Georgia, Texas, and North Carolina, and they are now in the process of being removed.
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Details:

1. **House Holds Oversight Hearings on USCIS, EOIR**

The U.S. House of Representatives' Judiciary Committee held oversight hearings in December 2015 on U.S. Citizenship and Immigration Services (USCIS) and on the Executive Office for Immigration Review (EOIR). Leon Rodriguez, USCIS Director, testified at the USCIS hearing. Juan Osuna, EOIR Director, testified at the EOIR hearing.

At the USCIS oversight hearing, Mr. Rodriguez noted that his agency's priorities include, in addition to safety and security issues, implementing the executive actions on immigration announced in November 2014. Those include reducing unauthorized immigration at the border; prioritizing removal of the most dangerous; improving the legal immigration system for families, employers, students, entrepreneurs and workers; and, on a case-by-case basis, considering for deferred action certain undocumented immigrants under two initiatives—Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), and expanding the population of individuals eligible for Deferred Action for Childhood Arrivals (DACA). Mr. Rodriguez noted that while DAPA and expanded DACA are on hold pursuant to a court injunction, USCIS and its partners in the Department of Homeland Security (DHS) and other departments have been working to implement the other parts of the executive actions. Mr. Rodriguez said that other top priorities were effective management of the Refugee Admissions Program, continuing modernization of USCIS business and applicant interaction processes and service, anti-fraud and national security screening, and other efforts.

At the EOIR oversight hearing, Mr. Osuna noted that previous budget cuts led to backlogs of more than 457,000 immigration cases across the United States as of the end of fiscal year (FY) 2015, which was exacerbated by the 2014 influx of border-crossers. Mr. Osuna said a number of new immigration judges are being hired to deal with the backlogs, as a result of new appropriations. Among other things, he also mentioned the installation of new video equipment that allows immigration judges to hear some cases remotely.

Mr. Osuna said that after taking into account attrition through the end of FY 2015, EOIR has increased the total number of immigration judges for the first time since FY 2011, and aggressive hiring efforts continue. He noted that a total of 23 new immigration judges have entered on duty since November 2014, and that as of November 15, 2015, the Attorney General had selected another 25 new judges, who are now going through the required background and security checks before they can start hearing cases. Another two dozen immigration

judge candidates, he noted, are going through the final stages of the hiring process. Mr. Osuna said that all of these new judges "will greatly assist in reducing the pending caseload when they arrive in immigration courts over the coming months."

Mr. Rodriguez's testimony from the USCIS hearing is at <http://judiciary.house.gov/cache/files/3e325f61-1d4a-4a8a-ad2f-1909cd14eec5/12-9-15-uscis-rodriguez-oversight-testimony.pdf>. A video of the full hearing, including questions and answers, is at <http://judiciary.house.gov/index.cfm/hearings?ID=DEA0F8AB-4CB9-4C09-B8F4-CA562C6BCA86>. Mr. Osuna's testimony is at <http://judiciary.house.gov/cache/files/467e5f9e-e9e9-4141-99be-5c24cac1db55/osunatestimony.pdf>. A video of the full hearing, including questions and answers, is at <http://judiciary.house.gov/index.cfm/2015/12/hearing-oversight-of-the-executive-office-of-immigration-review>.

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2. Visa Bulletin Notes Statistics on Applicants in Limited Immigrant Categories for Consular Processing

The Department of State's Visa Bulletin for February 2016 notes that the National Visa Center (NVC) has provided totals of applicants registered in the various numerically limited immigrant categories for processing at consular posts as of November 1, 2015.

In October, the Department of State asked the NVC at Portsmouth, New Hampshire, to report the totals of applicants on waiting lists in the various numerically limited immigrant categories. Applications for adjustment of status under INA § 245 pending at U.S. Citizenship and Immigration Services (USCIS) offices are not included in the tabulation of this immigrant waiting list data. As such, these figures only reflect petitions the Department of State has received, and do not include the significant number of applications held at USCIS offices.

The Visa Bulletin for February 2016 is at <https://travel.state.gov/content/visas/en/law-and-policy/bulletin/2016/visa-bulletin-for-february-2016.html>. The report is at <http://www.travel.state.gov/content/dam/visas/Statistics/Immigrant-Statistics/WaitingListItem.pdf>.

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3. USCIS Issues Reminder About Immigration Relief Measures for Victims of Severe Weather

USCIS issued a reminder on December 31, 2015, about immigration relief measures "that may help people affected by unforeseen circumstances, such as the recent severe weather and flooding in areas of the Southern and Midwestern United States."

USCIS said these measures may be available upon request:

- Change or extension of nonimmigrant status for an individual currently in the United States, even if the request is filed after the authorized period of admission has expired
- Re-parole of individuals previously granted parole by USCIS
- Expedited processing of advance parole requests
- Expedited adjudication of requests for off-campus employment authorization for F-1 students experiencing severe economic hardship
- Expedited adjudication of employment authorization applications, where appropriate
- Consideration of fee waivers due to an inability to pay
- Assistance for those who received a Request for Evidence or a Notice of Intent to Deny but were unable to appear for an interview, submit evidence, or respond in a timely manner
- Replacement of lost or damaged immigration or travel documents issued by USCIS, such as a Permanent Resident Card (Green Card)
- Rescheduling of a biometrics appointment

USCIS said that when making a request, the affected individual should explain how the severe weather created a need for the requested relief.

For more information, see uscis.gov/humanitarian/special-situations.

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4. USCIS Updates Request for Premium Processing Service Form

U.S. Citizenship and Immigration Services (USCIS) has posted an update to Form I-907, Request for Premium Processing Service. The new edition is dated 12/11/15. The 01/29/15 version will also still be accepted.

Employers may use the I-907 to request faster processing of certain employment-based petitions and applications. Form I-129, Petition for a Nonimmigrant Worker and Form I-140, Immigrant Petition for Alien Worker, have been designated for premium processing service, for example. Not all designated classifications within these forms are eligible, however, and the R-1 classification is only eligible after a successful onsite inspection at the place of employment.

The form is at <http://www.uscis.gov/i-907>. USCIS's Forms Updates page is at <http://www.uscis.gov/forms-updates>. For more information on categories eligible for premium processing, see <http://www.uscis.gov/forms/how-do-i-use-premium-processing-service>.

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5. DHS Secretary Releases Statement on Southwest Border Security in Light of Removals

Department of Homeland Security (DHS) Secretary Jeh Johnson released a statement on January 4, 2016, on southwest border security, in light of stepped-up removal operations underway.

Secretary Johnson noted that in the spring and summer of 2014, a significant spike occurred in families and unaccompanied children from Central America attempting to cross the U.S. southern border without authorization. In response, he noted, DHS took a number of actions in collaboration with the governments of Mexico, Guatemala, Honduras, and El Salvador, and the numbers declined dramatically. In FY 2015, he said, the number of apprehensions by U.S. Border Patrol of those attempting to cross the southern border without authorization decreased to 331,333. With the exception of one year, this was the lowest number of apprehensions on the southern border since 1972, he noted. In recent months, however, the rate of apprehensions on the southern border has begun to climb again, he said.

Secretary Johnson noted that the focus of the recent weekend's "operations" were adults and their children who (i) were apprehended after May 1, 2014, crossing the southern border illegally, (ii) have been issued final orders of removal by an immigration court, and (iii) have exhausted appropriate legal remedies, and have no outstanding appeal or claim for asylum or other humanitarian relief under U.S. laws. As part of these operations, he said, 121

individuals were taken into custody, primarily from Georgia, Texas, and North Carolina, and they are now in the process of being removed from the United States and repatriated. Most of these families are first being transported to one of ICE's family residential centers for temporary processing before being issued travel documents and boarding a return flight to their home countries.

He said a number of precautions were taken as part of these operations. Among other things, ICE "exercised prosecutorial discretion in a number of cases for health or other personal reasons," he noted.

Various individuals and groups have criticized the controversial removal operations, including the Congressional Hispanic Caucus. Chairwoman Linda Sanchez (D-Cal.) said, "Our federal government should not be separating parents from their children. As the mother of a young son, it's easy for me to imagine how traumatizing having ICE agents storm someone's home and tearing families apart can be for a young child. Invading homes is inhumane and adds to the trauma of these families fleeing violence and oppression." And Rep. Luis Gutierrez (D-Ill.) said, "We hear that children are not going to school and parents are not going to work out of fear. Not even a week into the New Year and 2016 has turned into one of fear and hiding. But let us be very clear. Deporting families will not resolve the violence and corruption that push people from El Salvador, Guatemala, and Honduras to risk assault, rape, and murder to seek refuge in the United States."

Presidential candidate Hillary Clinton said she "believes we should not be conducting large-scale raids and roundups that sow fear and division in our communities." On the Republican side, however, candidate Donald Trump took credit for the Obama administration's decision to conduct the raids.

On January 15, 2016, protesters came to the White House. A group of Central American organizations posted a statement against the "inhumane" raids at http://www.carecen-la.org/ca_orgs_respond_to_ice_raids. The Guatemalan Foreign Relations Ministry released a list of steps in Spanish for migrants in the United States who encounter U.S. immigration officials, at <http://www.minex.gob.gt/noticias/Noticia.aspx?id=17112>, and the Guatemalan and Salvadoran governments released statements against the raids. The Honduran government, however, reportedly did not join in the protests.

There have been business ramifications too, as people across the country stay inside due to fears and perceptions of random targeting. According to news

reports, for example, shop owners in Wheaton, Maryland, have complained that it has become difficult to cover rent and other bills because many fewer Latinos are out shopping. One owner of a popular Mexican-Salvadoran restaurant said that normally she sees around 300 customers per day but now she is only getting about 20. "Customers were telling me that the rumor was, 'Don't come to Wheaton. ICE is in the neighborhood,'" she said. Another shop owner said that his business income has dropped by 50 to 60 percent since the beginning of 2016.

Montgomery County, Maryland, which includes Wheaton, said that local police will not cooperate with the raids. Montgomery County Executive Isiah Leggett called the raids "ill-founded and counter-productive." County leaders expressed concerns that people are staying home from work and school, and are afraid to call the police when a crime is committed. On the other side, Corey Stewart, the board chair of Prince William County, Virginia, who is the leader of Mr. Trump's campaign in Virginia, said, "I'm going to do the very best that I can to encourage illegal aliens who want to commit crimes to leave Prince William County, in fact to leave Virginia all together, go up to Maryland, because you're welcome up there."

Secretary Johnson's statement is at

<http://www.dhs.gov/news/2016/01/04/statement-secretary-jeh-c-johnson-south-west-border-security>.

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6. Firm In The News

Cyrus D. Mehta & Partners PLLC, announced that David A. Isaacson and Cora-Ann V. Pestaina have become partners in the firm. Mr. Isaacson's practice includes family- and employment-based applications for nonimmigrant visas and permanent residence, as well as waivers, naturalization and citizenship matters, asylum cases, other removal proceedings such as those stemming from criminal convictions or denied applications for adjustment of status, and federal appellate litigation. Ms. Pestaina represents large global corporate clients, emerging growth companies, and individuals in a wide range of industries including information technology, finance, management consulting, pharmaceuticals, health care, and design. She also represents individuals in family-based applications and naturalization. Ms. Pestaina has extensive

experience in representing employers in PERM labor certification matters and regularly counsels clients regarding temporary employment-based nonimmigrant visas and permanent residence sponsorship for their foreign national employees. She also represents artists and investors, including EB-5 investors. Announcement of the Firm's elevation of David Isaacson and Cora-Ann V. Pestaina to Partners is discussed in [this Law360 article](#) dated January 15, 2016.

Cyrus Mehta was quoted in Law360's January 14, 2016 article entitled: "Foreign Worker Job Flexibility Rule Lacks Bite, Critics Say." [The relevant quote](#) of Cyrus Mehta is as follows:

"One key provision that's missing is broader work authorization for people with approved employment-based immigrant petitions, or I-140s, according to Cyrus Mehta of Cyrus D. Mehta & Partners PLLC. These petitions are part of the process that allows foreign nationals to become green card holders through a job.

"The centerpiece that the stakeholders were expecting...was the work authorization provision – the ability to get a work authorization and then move to another employer." Mehta said. "That has disappointed everybody, because the rule imposes very stringent standards."