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US IMMIGRATION & NATIONALITY LAW

APRIL 2016 IMMIGRATION UPDATE

Posted on April 4, 2016 by Cyrus Mehta

Headlines:

1. **USCIS Finalizes Guidance on 'Same or Similar' Occupations and Job Portability** – USCIS has finalized guidance on determining whether a new job is in the "same or similar" occupational classification with respect to job portability.
2. **USCIS Reaches H-2B Cap for First Half of FY 2016** – USCIS announced it has received a sufficient number of petitions to reach the H-2B cap for the first half of FY 2016. March 15, 2016, was the final receipt date for new H-2B worker petitions requesting an employment start date before April 1, 2016.
3. **USCIS Seeks Additional Comments on Revised Form I-9** – USCIS will accept comments until April 27, 2016, on the revised Employment Eligibility Verification Form I-9.
4. **DHS Issues Final Rule Amending F-1 Regs, Breaks Record for Public Comments** – DHS published a final rule amending regulations to expand optional practical training (OPT) for students with U.S. degrees in science, technology, engineering, or mathematics (STEM) and create new obligations for F-1 students and F-1 employers starting May 10, 2016.
5. **Potomac Service Center Now Processing Certain I-765 Cases, Issues Guidance on Correcting Errors** – The affected casework includes Form I-765, Application for Employment Authorization, filed by F-1 and M-1 students seeking Optional Practical Training and J-1 dependents.
6. **USCIS Extends TPS Designations for Liberia, Sierra Leone, Guinea** – The extended designations are effective May 22, 2016, through November 21, 2016. Current TPS beneficiaries from Guinea, Liberia, or Sierra Leone who seek to extend their TPS must re-register during a 60-day period that runs through May 23, 2016.

7. **Reminder: USCIS Is Accepting H-1B Petitions for FY 2017 Beginning April 1, 2016** – The Alliance of Business Immigration Lawyers recommends filing during the first five business days in April.
8. **CBP Announces Electronic Visa Update System for Certain Chinese B Visa Holders** – CBP announced the establishment of the Electronic Visa Update System (EVUS), a new platform under development to enhance border security in accordance with the bilateral arrangement with China to issue 10-year-validity tourist and business visas.
9. **State Dept. Announces Phase-Out of Employment Authorization for Diplomats' Dependents on A-2 Visas** – DOS announced the phase-out of DOS's endorsement of employment authorization requests for dependents of foreign government employees holding A-2 visas who are considered to be permanently resident in the United States for purposes of the Vienna Conventions on Diplomatic and Consular Relations.
10. **DHS Launches 'Known Employer' Pilot** – DHS announced a "Known Employer" pilot to assess a new process for employers seeking to hire certain workers through employment-based visa categories.
11. **ABIL Global: South Africa** – There have been several developments in business travel.

Details:

1. **USCIS Finalizes Guidance on 'Same or Similar' Occupations and Job Portability**

On March 18, 2016, U.S. Citizenship and Immigration Services (USCIS) finalized guidance, effective March 21, on determining whether a new job is in the "same or similar" occupational classification with respect to job portability. The policy memorandum instructs USCIS employees on how to use the Department of Labor's Standard Occupational Classification (SOC) codes and other evidence to determine if a new job is in the same or a similar occupational classification as the original job offer in an Immigrant Petition for Alien Worker (Form I-140) submitted to USCIS.

The memo notes that such adjudications "require individualized assessments that consider the totality of the circumstances and are based on a preponderance of the evidence presented." The memo states that SOC codes "provide some measure of objectivity in such assessments and thus can help address uncertainty in the portability determination process." Although the

memo focuses on how to interpret and apply SOC codes, it points out that nothing in the memo "is intended to make SOC codes or their descriptions the only factor or a mandatory factor in portability determinations or to otherwise limit USCIS' flexibility to consider other relevant evidence."

Despite those assurances, some commenters expressed concerns that the guidance could have the practical effect of leading to a rigid application of SOC codes to "same or similar" determinations. The Alliance of Business Immigration Lawyers (ABIL) referred to comments it submitted on February 29, 2016, regarding a Department of Homeland Security (DHS) proposed rule issued on December 31, 2015, "Retention of EB-1, EB-2 and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers." DHS proposed a new 8 CFR § 245.25 intended to "clarify and improve" policies and procedures related to the job portability provisions of § 106(c) of American Competitiveness in the Twenty-First Century Act (AC21). ABIL believes that the proposed 8 CFR § 245.25(c) takes an overly narrow interpretation of the term "same or similar" and results in an interpretation of INA § 204(j) (created by AC21) that is "more inflexible than current practice, lessens job flexibility, and takes much-needed discretion away from USCIS adjudicators." See #2, "Job Portability Under AC21 for Certain Applicants for Adjustment of Status," at http://www.abil.com/articles/ABIL%20Comment%20-%20Retention%20of%20Immigrant%20Workers%20&%20Program%20Improvements%20%2802.29.16%29.pdf.

The memo is at https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2016/Final_Same_or_Similar_Policy_Final_Memorandum_3-18-16.pdf.

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2. **USCIS Reaches H-2B Cap for First Half of FY 2016**

On March 21, 2016, U.S. Citizenship and Immigration Services (USCIS) announced that it has received a sufficient number of petitions to reach the congressionally mandated H-2B cap for the first half of fiscal year (FY) 2016. March 15, 2016, was the final receipt date for new H-2B worker petitions requesting an employment start date before April 1, 2016.

Except as noted below, USCIS will reject new H-2B petitions that were received

after March 15, 2016, and that request an employment start date before April 1, 2016.

USCIS will continue to accept H-2B petitions that are exempt from the congressionally mandated cap. This includes:

- For FY 2016 only, workers identified as “returning workers” who were previously counted against the annual H-2B cap during FYs 2013, 2014, or 2015;
- Current H-2B workers in the U.S. petitioning to extend their stay and, if applicable, change the terms of their employment or change their employers;
- Fish roe processors, and fish roe technicians and/or supervisors of fish roe processing; and
- Workers performing labor or services from November 28, 2009, until December 31, 2019, in the Commonwealth of the Northern Mariana Islands and/or Guam.

USCIS said that to avoid processing delays, petitioners who are including H-2B returning workers on their petition must complete and include the H-2B Returning Worker Certification and are encouraged to write "H-2B Returning Workers" prominently on the envelope and any cover page.

The USCIS announcement is at https://www.uscis.gov/news/alerts/uscis-reaches-h-2b-cap-first-half-fiscal-year-2016. More information is at https://www.uscis.gov/news/alerts/h-2b-returning-workers-exempted-h-2b-cap-fiscal-year-2016.

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3. **USCIS Seeks Additional Comments on Revised Form I-9**

U.S. Citizenship and Immigration Services (USCIS) will accept comments until April 27, 2016, on the revised Employment Eligibility Verification, Form I-9. In response to the approximately 130 public comments USCIS received during the previous 60-day notice, USCIS made further changes to the proposed form. Key changes to the form include:

- Validations on certain fields to ensure information is entered correctly;
- Additional spaces to enter multiple preparers and translators;

- Dropdown lists and calendars;
- Embedded instructions for completing each field;
- Ways to allow users to access the instructions electronically, print the form, and clear the form to start over;
- A dedicated area to enter additional information that employers are currently required to notate in the margins of the form;
- A quick-response matrix barcode, or QR code, that generates once the form is printed "that can be used to streamline audit processes";
- Requiring employees to provide only other last names used in Section 1, rather than all other names used;
- Removing the requirement that those authorized to work provide both their Form I-94 number and foreign passport information in Section 1;
- Separating instructions from the form, in keeping with USCIS practice; and
- Adding a Supplement in cases where more than one preparer or translator is used to complete Section 1.

USCIS noted that after the 30-day comment period ends and public comments are considered, the agency may make further changes to the form. Comments may be submitted by following the instructions in the USCIS notice at https://www.gpo.gov/fdsys/pkg/FR-2016-03-28/html/2016-06883.htm.

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4. **DHS Issues Final Rule Amending F-1 Regs, Breaks Record for Public Comments**

On March 11, 2016, the Department of Homeland Security (DHS) published a final rule amending regulations to expand optional practical training (OPT) for students with U.S. degrees in science, technology, engineering, or mathematics (STEM) and create new obligations for F-1 students and F-1 employers starting May 10, 2016.

OPT is a form of temporary employment available to F-1 students (except those in English language training programs) that directly relates to a student's major area of study in the United States. A student can apply to engage in OPT during or after completing his or her academic program. A student can apply for 12 months of OPT at each education level (e.g., one 12-month OPT period at the bachelor's level and another 12-month period at the master's level). While school is in session, the student may work up to 20 hours per week pursuant to

OPT.

DHS first introduced an extension of OPT for STEM graduates in a 2008 interim final rule. Under the 2008 rule, an F-1 student with a STEM degree from a U.S. institution of higher education could apply for an additional 17 months of OPT (17-month STEM OPT extension), provided that the employer from which the student sought employment was enrolled in and remained in good standing in the E-Verify employment eligibility verification program. On August 12, 2015, the U.S. District Court for the District of Columbia ordered the vacatur of the 2008 rule on procedural grounds and remanded the issue to DHS. The court stayed the vacatur until February 12, 2016, to give DHS the opportunity to issue a new rule related to STEM OPT extensions through notice-and-comment rulemaking.

On October 19, 2015, DHS published a notice of proposed rulemaking (NPRM) to reinstate the STEM OPT extension, with changes intended to enhance the educational benefit afforded by the extension and to increase program oversight, including safeguards to protect U.S. workers. The rule received more than 50,500 comments—the most in DHS history. On January 23, 2016, the court gave DHS additional time to complete the rulemaking following review of public comments and to allow the Department to publish the rule with a 60-day delayed effective date to provide sufficient time for efficient transition to the new rule's requirements.

DHS has now completed the final rule. Highlights include:

Extension period to increase from 17 to 24 months. Under the amended regulations, F-1 STEM students will be able to extend OPT for an additional 24 months beyond the initial 12 months, replacing the 2008 regulation that allowed F-1 STEM students to receive a 17-month extension of OPT, providing work authorization for employment related to their field of study.

New reporting requirements for F-1 students and university officials. New reporting requirements include: (1) a six-month validation requirement, confirming the F-1 student applicant's application for work authorization through the OPT program; (2) an annual self-evaluation required of F-1 students, for designated school officials to review; and (3) an affirmative requirement for F-1 students to report any change in employment status or material departure from the adopted Training Plan. This is in addition to the requirement for F-1 employers to report similar changes to designated school

officials within five business days, which remains in effect.

F-1 employer requirement to complete formal Training Plan with F-1 student. The new regulations will increase DHS oversight over the OPT program. F-1 employers must complete a formal Training Plan, Form I-983, and comply with new wage requirements. The formal Training Plan must include concrete learning objectives with proper oversight. F-1 employers must set out the terms and conditions of employment, including the specific duties, hours, and compensation.

As part of the Training Plan, F-1 employers must attest that the F-1 employee is paid a salary commensurate with similarly situated workers and that: "(1) it has sufficient resources and trained personnel available to provide appropriate training in connection with the specified opportunity; (2) the student will not replace a full- or part-time, temporary or permanent U.S. worker; and (3) the opportunity will help the student attain his or her training objectives."

DHS to conduct on-site visits. The new regulations state that DHS has discretion to conduct employer site visits to ensure that F-1 employers meet the requirements of the OPT program. Generally, DHS must provide notice 48 hours before an on-site inspection, unless the visit is conducted in response to a complaint or evidence of noncompliance.

Cap-gap extension language clarified. DHS has revised the cap-gap extension regulation to clarify that the extension for F-1 students with pending H-1B petitions and requests for change of status temporarily extends the OPT period until October 1, the beginning of the new fiscal year.

Additionally, the final rule states:

- Only students who earned a degree from a school accredited by a U.S. Department of Education-recognized accrediting agency and certified by the Student and Exchange Visitor Program (SEVP) may apply for a STEM OPT extension.
- Participating students who receive an additional qualifying degree from an accredited college or university can apply for a second STEM OPT extension.
- Participating students can use a previously earned qualifying degree to apply for a STEM OPT extension. The prior degree must not have already formed the basis of a STEM OPT extension and must be from a school

that is both accredited by a U.S. Department of Education-recognized accrediting agency and certified by SEVP at the time of the student's STEM OPT application. The student's most recent degree must also be from an accredited and SEVP-certified institution.
- Students must work at least 20 hours per week per employer to qualify.
- Students are permitted a limited period of unemployment during the initial period of post-completion OPT and the STEM OPT extension.
- All STEM OPT employers must participate in DHS's E-Verify program.

Also on March 11, 2016, SEVP launched a STEM OPT Hub at https://studyinthestates.dhs.gov/stem-opt-hub. The Hub includes resources for students, designated school officials, and employers.

The final rule, which replaces the existing 2008 interim final rule and amends the current regulations at 8 CFR parts 214 and 274a, is at https://www.federalregister.gov/articles/2016/03/11/2016-04828/improving-and-expanding-training-opportunities-for-f-1-nonimmigrant-students-with-stem-degrees-and. A related ICE press release is at https://www.ice.gov/news/releases/sevp-stem-opt. Information on completing the Training Plan form is at https://studyinthestates.dhs.gov/form-i-983-overview. More information about SEVP is at https://www.ice.gov/sevis.

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5. **Potomac Service Center Now Processing Certain I-765 Cases, Issues Guidance on Correcting Errors**

On March 1, 2016, U.S. Citizenship and Immigration Services (USCIS) began transferring certain cases to the Potomac Service Center (PSC) from other service centers to balance workloads. The affected casework includes Form I-765, Application for Employment Authorization, filed by F-1 and M-1 students seeking Optional Practical Training (OPT) and J-1 dependents.

If USCIS transfers a case, the agency will send the applicant a transfer notice. The original receipt number will not change and the transfer will not delay processing, USCIS said.

Also, the filing location and instructions for these forms are not changing. USCIS is instructing applicants to continue to file the forms at the address listed

under "**Where to File"** in the I-765 instructions.

How to correct errors. If an Employment Authorization Document (EAD) card was approved by the PSC and contains incorrect information that the applicant believes is due to USCIS error, the applicant should submit a letter that explains the error, and include the EAD card containing the incorrect information, documents showing that USCIS made an error (such as a copy of the application sent to USCIS with the correct information, and a copy of the applicant's birth certificate with the correct name). The letter and supporting documents should be sent to the Nebraska Service Center:

U.S. Citizenship and Immigration Services Nebraska Service Center ATTN CCS Unit P.O. Box 82521 Lincoln, NE 68501-2521

USCIS asks that individuals not send the letter and card to the PSC. "If USCIS made an error, you do not need to submit a new Form I-765 or pay a new filing fee," USCIS noted.

The announcement is at https://www.uscis.gov/news/potomac-service-center-now-processing-certain-form-i-765-cases.

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6. **USCIS Extends TPS Designations for Liberia, Sierra Leone, Guinea**

On March 22, 2016, U.S. Citizenship and Immigration Services (USCIS) announced the extension of temporary protected status (TPS) designations of Liberia, Sierra Leone, and Guinea for an additional six months. The extended designation is effective May 22, 2016, through November 21, 2016. Current TPS Guinea, Liberia, or Sierra Leone beneficiaries seeking to extend their TPS must re-register during a 60-day period that began on March 22, 2016, and runs through May 23, 2016. U.S. Citizenship and Immigration Services (USCIS) encourages beneficiaries to re-register as soon as possible.

USCIS noted "significant improvements in the conditions in all three countries since their designations for TPS in November 2014," but said the lingering effects of the Ebola virus disease outbreak and continued recovery challenges support a six-month extension.

The six-month extension allows TPS re-registrants to apply for a new employment authorization document (EAD). Eligible TPS beneficiaries who re-

register during the 60-day period and request a new EAD will receive one with an expiration date of November 21, 2016. USCIS said it recognizes that some re-registrants may not receive their new EADs until after their current work permits expire. Therefore, USCIS is automatically extending current TPS Guinea, Liberia, and Sierra Leone EADs bearing a May 21, 2016, expiration date for six months. These existing EADs are now valid through November 21, 2016.

To re-register for TPS, current beneficiaries must submit:

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

Individuals who still have a pending initial TPS Guinea, Liberia, or Sierra Leone application do not need to submit a new I-821. However, if they currently have a TPS-related EAD and want a new EAD, they should submit:

- Form I-765, Application for Employment Authorization;
- The Form I-765 application fee, regardless of their age; and
- A copy of the receipt notice for the initial Form I-821 that is still pending.

USCIS said it will reject the TPS application of any applicant who fails to submit the required filing fees or a properly documented fee-waiver request. Applicants may ask USCIS to waive any fees based on an 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.

The USCIS announcement is at https://www.uscis.gov/news/news-releases/temporary-protected-status-extended-guinea-liberia-and-sierra-leone-six-months. Additional information about TPS—including guidance on eligibility, the application process, and where to file—is at https://www.uscis.gov/humanitarian/temporary-protected-status. The Federal Register notices contain further details, including application requirements and procedures, and the six-month auto-extension of current

EADs. See https://www.gpo.gov/fdsys/pkg/FR-2016-03-22/html/2016-06328.htm (Liberia), https://www.gpo.gov/fdsys/pkg/FR-2016-03-22/html/2016-06330.htm (Sierra Leone), and https://www.gpo.gov/fdsys/pkg/FR-2016-03-22/html/2016-06325.htm (Guinea).

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7. **Reminder: USCIS Is Accepting H-1B Petitions for FY 2017 Beginning April 1, 2016**

On April 1, 2016, U.S. Citizenship and Immigration Services (USCIS) began accepting H-1B petitions subject to the fiscal year (FY) 2017 cap. U.S. businesses use the H-1B program to employ foreign workers in occupations that require highly specialized knowledge in fields such as science, engineering, and computer programming.

The congressionally mandated cap on H-1B visas for FY 2017 is 65,000. The first 20,000 H-1B petitions filed for individuals with a U.S. master's degree or higher are exempt from the 65,000 cap.

The Alliance of Business Immigration Lawyers (ABIL) recommends filing during the first five business days in April. Contact your ABIL member for help with H-1B applications.

The latest USCIS announcement is at https://www.uscis.gov/news/news-releases/uscis-will-accept-h-1b-petitions-fiscal-year-2017-beginning-april-1-2016.

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8. **CBP Announces Electronic Visa Update System for Certain Chinese B Visa Holders**

On March 15, 2016, U.S. Customs and Border Protection (CBP) announced the establishment of the Electronic Visa Update System (EVUS), a new platform under development to enhance border security in accordance with the bilateral arrangement with China to issue 10-year-validity tourist and business visas.

Beginning in November 2016, nationals of the People's Republic of China holding 10-year visas B-1/B-2, B-1, and B-2 visas must complete an online form to update certain biographic information. Travelers will need to enroll in EVUS before traveling to the United States. An EVUS enrollment is valid for two years

or until the traveler obtains a new passport, whichever comes first.

"More than 2.7 million nationals of the People's Republic of China are part of the 10-year visa program, a milestone in diplomatic relations between the U.S. and China," said CBP Commissioner R. Gil Kerlikowske. "The Electronic Visa Update System will enable CBP to enhance the security of the program while facilitating legitimate travel."

In addition to having valid 10-year visas and being required to complete EVUS enrollments before their first travel to the United States, such travelers will need to update their enrollments at least once every two years to be admitted into the United States. A nominal fee will be charged at the time of the EVUS enrollment and subsequent updates. The update will generally be valid for two years and will help to facilitate entry into the United States.

EVUS will be launched in November 2016. Travelers will be asked to update or verify their name, address, date of birth, passport number, and other basic biographic information needed to expedite entry into the United States. Visa holders do not need to do anything until the platform has officially launched, CBP said.

The EVUS process is similar to the process that travelers from 38 other countries must follow before traveling to the United States, CBP noted. "If Chinese travelers do not update their information at least every two years, or upon obtaining new passports after EVUS becomes effective, they will not be able to use their 10-year visas," CBP said.

The announcement is at https://www.cbp.gov/newsroom/national-media-release/2016-03-15-000000/cbp-announces-electronic-visa-update-system.

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9. **State Dept. Announces Phase-Out of Employment Authorization for Diplomats' Dependents on A-2 Visas**

The Department of State (DOS) recently announced the phase-out of DOS's endorsement of employment authorization requests for dependents of foreign government employees holding A-2 visas who are considered to be permanently resident in the United States for purposes of the Vienna Conventions on Diplomatic and Consular Relations ("PA2 employees"). DOS's

Office of Foreign Missions (OFM) will consider new applications only from dependents of PA2 employees who began employment between July 1 and December 31, 2015. OFM will consider renewal applications only from a PA2 employee's dependents whose current employment authorization cards expire on or before June 30, 2016.

The DOS note is at http://www.state.gov/documents/organization/249848.pdf.

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10. **DHS Launches 'Known Employer' Pilot**

The Department of Homeland Security (DHS) announced on March 3, 2016, a "Known Employer" pilot to assess a new process for employers seeking to hire certain workers through employment-based visa categories.

By modifying the process U.S. Citizenship and Immigration Services (USCIS) uses to review an employer's eligibility to sponsor individuals under certain employment-based immigrant and nonimmigrant classifications, the Known Employer pilot is expected to reduce paperwork, costs, and delays in the processing of these benefit requests. USCIS will oversee the pilot in collaboration with the DHS Office of Policy, U.S. Customs and Border Protection (CBP), and the Department of State (DOS).

"Today, we're partnering with a select group of representative organizations across a variety of industries to determine how we can improve efficiency and cut costs. If successful, we will continue to build on this trial program and promote robust trade, travel, and economic prosperity," said USCIS Director León Rodríguez.

The goals of the Known Employer pilot are to make the employment eligibility adjudication process more efficient and reduce delays for U.S. employers that wish to employ foreign workers under certain immigrant and nonimmigrant visa programs by:

- Reducing the amount of paperwork filed by employers and retained by USCIS;
- Promoting consistency in the adjudication of employment-based petitions and applications;
- Streamlining the adjudicative process to achieve greater efficiency within USCIS; and

- Providing greater support to CBP and DOS in support of greater efficiency and consistency at ports of entry and consular posts.

According to reports, five employers had confirmed their participation in the pilot as of the launch date: Citigroup, Inc.; Ernst & Young LLP; Kiewit Corporation; Schaeffler Group USA Inc.; and Siemens Corp.

Under the Known Employer pilot, up to nine preselected employers will file applications requesting that USCIS predetermine that they meet certain requirements relating to certain immigrant and nonimmigrant visa classifications. When making this request, employers will create a profile in the Web-based Known Employer Document Library (KEDL), and upload documents relating to the requirements. USCIS officers will review and predetermine whether a prospective employer has met certain requirements relating to the visa classifications. If USCIS approves the employer's predetermination request, the employer may then file petitions or applications for individual employees without needing to resubmit company information with each petition or application.

Reportedly, immigrant classifications included in the Known Employer pilot are E-12 (outstanding professor or researcher) and E-13 (multinational executive or manager). Nonimmigrant classifications included in the pilot are H-1B (specialty occupation worker), L-1A (intracompany transferee in a managerial or executive capacity), L-1B (intracompany transferee in a position involving specialized knowledge), and TN (Trade NAFTA: Canadian and Mexican citizens engaged in business activities at a professional level under the North American Free Trade Agreement).

Employers will not be charged any additional fees to participate in the Known Employer pilot. The pilot is scheduled to last for up to one year. However, USCIS may terminate or extend the pilot at any time. DHS and DOS will solicit ongoing feedback from participants. If the pilot is successful, DHS is expected to seek permanency for the program and open it to all eligible employers.

DHS first announced in January 2015 that it would explore a Known Employer pilot under the U.S.-Canada Beyond the Border initiative. The pilot also was recommended in a report from federal agencies submitted to President Obama in July 2015, "Modernizing and Streamlining Our Legal Immigration System for the 21st Century."

DHS's announcement is at https://www.dhs.gov/news/2016/03/03/dhs-launches-known-employer-pilot-program. See also the Known Employer Pilot page at https://www.uscis.gov/working-united-states/known-employer-pilot.

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11. **ABIL Global: South Africa**

There have been several developments in business travel.

In recent months, there have been several developments of interest to business travelers to South Africa:

- The Department of Home Affairs has implemented the International Civil Aviation Organization's (ICAO's) requirement that as of November 24, 2015, only machine-readable travel documents will be accepted at any South African port of entry. The ban on non-machine-readable travel documents extends to passports that have been extended or renewed manually, as some countries still allow. The Department announced that this restriction does not apply to travelers using Emergency Travel Documents. The Department also announced that persons who had entered South African on non-machine-readable travel documents before November 24, 2015, will be allowed to depart. In addition, persons who enter South Africa on machine-readable travel documents and who lose their passports in-country can depart with Emergency Travel Documents.
- An amendment of the Immigration Act in 2014 provided that the spouse of a South African citizen who had entered the country on a short-term visitor visa (for up to 90 days) could not apply from within South Africa to change status to that of a long-term visitor (for up to two years) to accompany the South African spouse. In February 2016, the High Court ruled, however, that it is now lawful for a foreign spouse to apply for such a change of visa conditions from within the country.
- Also in February 2016, the Department announced that it was immediately withdrawing a dispensation to persons holding asylum-seeker permits that had allowed them to apply for temporary residence (so long as they qualified for the relevant visa)—and with retroactive effect. The withdrawal of the dispensation is now the subject of an urgent High Court challenge to be heard at the end of April 2016.
- Finally, the Minister of Home Affairs is expected to announce shortly a

Green Paper on migration. This will constitute the first formal re-thinking of immigration policy in South Africa since the revision of apartheid-era immigration law in the late 1990s.

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