



## MID-APRIL 2016 IMMIGRATION UPDATE

*Posted on April 19, 2016 by Cyrus Mehta*

### Headlines:

1. [USCIS Reaches FY 2017 H-1B Cap](#) – As expected, USCIS has quickly reached the H-1B cap for FY 2017. USCIS also received more than the limit of 20,000 H-1B petitions filed under the U.S. advanced degree exemption. Due to the high number of petitions, USCIS is not yet able to announce the date on which it will conduct the random selection process.
2. [Current I-9 Form Remains Effective, USCIS Says](#) – USCIS said the current version of the I-9 continues to be even though the form's expiration date of March 31, 2016, has passed.
3. [Labor Dept. Extends Emergency Procedures for Backlogged H-2B Applications Through April 29](#) – The U.S. Department of Labor continues to experience significant delays in processing employers' H-2B applications for certification and is therefore extending the availability of emergency procedures through April 29, 2016.
4. [E-Passports or Visas Are Now Required for VWP Travelers to United States, DHS Secretary Announces](#) – VWP travelers who do not have an e-Passport from a participating VWP country must obtain a visa to come to the United States.
5. [May Visa Bulletin Sets Final Action Date for EB-4 Visas for El Salvador, Guatemala, Honduras Special Immigrants](#) – The Visa Bulletin for May 2016 reflects a final action date of January 1, 2010, for EB-4 visas for special immigrants from El Salvador, Guatemala, and Honduras. This means that starting in May, an applicant from any of these countries who filed a Petition for Amerasian, Widow(er), or Special Immigrant on or after January 1, 2010, will not be able to obtain an immigrant visa or adjust status until new visas become available.
6. [ICE Nabs 21 With Fake 'Pay-to-Stay' New Jersey Sham College Sting](#) –

Twenty-one brokers, recruiters, and employers were arrested on April 5, 2016, who allegedly conspired with more than a thousand foreign nationals to fraudulently maintain student and foreign worker visas through a "pay-to-stay" New Jersey sham college set up as a sting operation.

## 7. [Firm In the News...](#)

### Details:

#### 1. **USCIS Reaches FY 2017 H-1B Cap**

As expected, U.S. Citizenship and Immigration Services (USCIS) has quickly reached the congressionally mandated H-1B cap for fiscal year (FY) 2017. USCIS also received more than the limit of 20,000 H-1B petitions filed under the U.S. advanced degree exemption.

On April 9, 2016, USCIS completed the computer-generated process ("lottery") to randomly select the petitions needed to meet the caps of 65,000 visas for the general category and 20,000 for the advanced degree exemption. USCIS said it first randomly selected petitions for the advanced degree exemption. All unselected advanced degree petitions became part of the random selection process for the 65,000 general cap. The agency is rejecting and returning filing fees for all unselected cap-subject petitions that are not duplicate filings. USCIS said it will begin premium processing for H-1B cap cases by May 16, 2016.

Before running the lottery, USCIS completed initial intake for all filings received during the filing period, which ended April 7, 2016. USCIS received over 236,000 H-1B petitions during the filing period, which began April 1, including petitions filed for the advanced degree exemption. The number of petitions received this year reportedly topped last year's record by at least 3,000 and 2014's total by 63,500.

USCIS will continue to accept and process petitions that are otherwise exempt from the cap. Petitions filed on behalf of current H-1B workers who have been counted previously against the cap, and who still retain their cap number, will also not be counted toward the FY 2017 H-1B cap. USCIS will continue to accept and process petitions filed to:

- Extend the amount of time a current H-1B worker may remain in the United States;

- Change the terms of employment for current H-1B workers;
- Allow current H-1B workers to change employers; and
- Allow current H-1B workers to work concurrently in a second H-1B position.

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.

USCIS encourages H-1B applicants to subscribe to the H-1B Cap Season email updates located on the H-1B Fiscal Year 2017 Cap season Web page at <https://www.uscis.gov/working-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/h-1b-fiscal-year-fy-2017-cap-season>.

Related USCIS announcements are at <https://www.uscis.gov/news/alerts/uscis-completes-h-1b-cap-random-selection-process-fy-2017> and <https://www.uscis.gov/news/news-releases/uscis-reaches-fy-2017-h-1b-cap>.

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## 2. **Current I-9 Form Remains Effective, USCIS Says**

U.S. Citizenship and Immigration Services (USCIS) announced on April 5, 2016, that until further notice, employers **should continue** using the current Form I-9, Employment Eligibility Verification. The agency said this current version of the form continues to be effective even though the Office of Management and Budget control number expiration date of March 31, 2016, has passed. USCIS said it will provide updated information about the new version of the I-9 when it becomes available. The announcement is at <https://www.uscis.gov/news/alerts/current-form-i-9-employment-eligibility-verification-remains-effective-after-march-31-2016>.

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## 3. **Labor Dept. Extends Emergency Procedures for Backlogged H-2B Applications Through April 29**

The Department of Labor's Office of Foreign Labor Certification (OFLC) continues to experience significant delays in processing employers' H-2B applications for certification and is therefore extending the availability of

emergency procedures through April 29, 2016. OFLC explained that the delays have been generated by several factors, the most significant of which was a 17-day certification processing pause at the Chicago National Processing Center (CNPC) needed for OFLC to implement changes to comply with revisions to the H-2B prevailing wage and certification standards under an appropriations law Congress passed in late 2015.

OFLC said the delays in the certification process that applicants are continuing to experience "impair the ability of employers to hire foreign workers when needed, and create instability for small businesses that depend on temporary and seasonal workers." OFLC has concluded that the delays still preventing the timely processing of H-2B applications "constitute good and substantial cause under 20 CFR § 655.17 for employers to request emergency procedures of their currently pending applications."

Therefore, OFLC said, employers with pending H-2B applications will be able to continue to request the emergency procedures under 20 CFR § 655.17 through April 29, 2016, so that CNPC can address the current application processing backlog.

The announcement is at <https://www.foreignlaborcert.doleta.gov/> (scroll to March 28). The full announcement of the emergency procedures initiative and details on how employers can continue to participate is at [https://www.foreignlaborcert.doleta.gov/pdf/H-2B\\_Emergency-Processing\\_Initiative.pdf](https://www.foreignlaborcert.doleta.gov/pdf/H-2B_Emergency-Processing_Initiative.pdf).

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#### **4. E-Passports or Visas Are Now Required for VWP Travelers to United States, DHS Secretary Announces**

Department of Homeland Security (DHS) Secretary Jeh Johnson recently announced that effective April 1, 2016, Visa Waiver Program (VWP) participants must have an e-Passport to travel to the United States. Under the Visa Waiver Program Improvement and Terrorist Travel Prevention Act, VWP travelers who do not have an e-Passport from a participating VWP country must obtain a visa to come to the United States.

Secretary Johnson's statement is at <https://www.dhs.gov/news/2016/04/01/statement-secretary-jeh-c-johnson-strengthening-travel-security-e-passports>.

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## 5. **May Visa Bulletin Sets Final Action Date for EB-4 Visas for El Salvador, Guatemala, Honduras Special Immigrants**

The Department of State's Visa Bulletin for May 2016 reflects a final action date of January 1, 2010, for EB-4 visas for special immigrants from El Salvador, Guatemala, and Honduras. This means that starting in May, an applicant from any of these countries who filed a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant on or after January 1, 2010, will not be able to obtain an immigrant visa or adjust status until new visas become available. The final action date became effective upon publication of the May Visa Bulletin on April 12.

The Visa Bulletin explains that these three countries have already reached their EB-4 visa limits as congressionally mandated for fiscal year 2016, which ends September 30. Information on EB-4 visa availability for fiscal year 2017 for El Salvador, Guatemala, and Honduras will appear in the October Visa Bulletin (to be published in mid-September).

Petitioners from any country, including El Salvador, Guatemala, and Honduras, may continue to file Forms I-360. There is no annual limit on the number of I-360 petitions that USCIS may approve.

The Department said it will accept all properly filed submissions of Form I-485, Application to Register Permanent Residence or Adjust Status, under the EB-4 classification **until April 30, 2016**. USCIS noted:

- We will process and make a decision on your Form I-485 application **only** if you have a Form I-360 filed before January 1, 2010, that is ultimately approved.
- If you have a pending Form I-360 filed on or after January 1, 2010, we will process and make a decision on your Form I-360 but withhold a decision to approve your Form I-485 application pending availability of an EB-4 visa.

The Department also stated:

If you file Form I-485 under the EB-4 classification **after April 30, 2016**:

- We will process and make a decision on your Form I-485 **only** if you filed

your Form I-360 petition before January 1, 2010, and your Form I-360 is ultimately approved.

- We will reject and return other Form I-485 applications but will continue to process Form I-360 petitions (even if submitted together with a Form I-485 that gets rejected).

The May 2016 Visa Bulletin is at

<https://travel.state.gov/content/visas/en/law-and-policy/bulletin/2016/visa-bulletin-for-may-2016.html>. Information on final action dates is at

<https://www.uscis.gov/visabulletininfo>.

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## 6. ICE Nabs 21 With Fake 'Pay-to-Stay' New Jersey Sham College Sting

Twenty-one brokers, recruiters, and employers were arrested on April 5, 2016, who allegedly conspired with more than a thousand foreign nationals to fraudulently maintain student and foreign worker visas through a "pay-to-stay" New Jersey sham college set up as a sting operation. The arrests resulted from an extensive probe led by U.S. Immigration and Customs Enforcement's (ICE) Homeland Security Investigations (HSI).

According to ICE, the defendants, many of whom operated recruiting companies for purported international students, were arrested for their involvement in an alleged scheme to enroll foreign nationals as students in the University of Northern New Jersey (UNNJ), a purported for-profit college located in Cranford, New Jersey. HSI special agents created UNNJ in September 2013.

Through UNNJ, undercover HSI agents investigated criminal activities associated with ICE's Student and Exchange Visitor Program (SEVP), including but not limited to student visa fraud and the harboring of aliens for profit. The UNNJ was not staffed with instructors or educators, had no curriculum, and conducted no actual classes or education activities. The UNNJ operated solely as a storefront location with small offices staffed by special agents posing as school administrators.

UNNJ represented itself as a school that, among other things, was authorized to issue a Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status for Academic and Language Students. During the investigation, HSI special agents identified hundreds of foreign nationals, primarily from China and India, who previously entered the U.S. on F-1 nonimmigrant student visas to attend

other SEVP-authorized schools. Through various recruiting companies and business entities located in New Jersey, California, Illinois, New York, and Virginia, the defendants then enabled approximately 1,076 of these foreign individuals—all of whom were willing participants in the scheme—to fraudulently maintain their nonimmigrant status in the U.S. on the false pretense that they continued to participate in full courses of study at UNNJ.

Acting as recruiters, the defendants solicited the involvement of UNNJ administrators to participate in the scheme, ICE said. During the course of their dealings with undercover agents, the defendants fully acknowledged that none of their foreign national clients would attend any courses, earn credits, or make academic progress toward an actual degree in a particular field of study. Rather, the defendants facilitated the enrollment of their foreign national clients in UNNJ to fraudulently maintain student visa status in exchange for kickbacks, or "commissions." The defendants also facilitated the creation of hundreds of false student records, including transcripts, attendance records, and diplomas, which ICE said were purchased by their foreign national conspirators for the purpose of deceiving immigration authorities.

In other instances, ICE noted, the defendants used UNNJ to fraudulently obtain work authorization and work visas for hundreds of their clients. By obtaining this authorization, a number of defendants were able to outsource their foreign national clients as full-time employees with numerous U.S.-based corporations, also in exchange for commission fees. Other defendants devised phony IT projects that were purportedly to occur at the school. These defendants then created and caused to be created false contracts, employment verification letters, transcripts, and other documents. The defendants then paid the undercover agents thousands of dollars to put the school's letterhead on the sham documents, to sign the documents as school administrators, and to otherwise go along with the scheme, ICE said.

"All of these bogus documents created the illusion that prospective foreign workers would be working at the school in some IT capacity or project," ICE said. The defendants then used these fictitious documents fraudulently to obtain labor certifications issued by the Department of Labor and then ultimately to petition the U.S. government to obtain H1-B visas for nonimmigrants. These fictitious documents were then submitted to U.S. Citizenship and Immigration Services (USCIS). In the vast majority of circumstances, the foreign worker visas were not issued because USCIS was



advised of the ongoing undercover operation, ICE said.

In addition, ICE said that HSI Newark is coordinating with the ICE Counterterrorism and Criminal Exploitation Unit (CTCEU) and the SEVP to terminate the nonimmigrant student status of the 1,076 foreign nationals associated with UNNJ and, if applicable, administratively arrest and place them into removal proceedings.

A chart at the link below outlines the charges for each defendant. The charges of conspiracy to commit visa fraud and making a false statement each carry a maximum potential penalty of five years in prison and a \$250,000 fine. The charges of conspiracy to harbor aliens for profit and H-1B visa fraud each carry a maximum penalty of 10 years in prison and a \$250,000 fine.

Meanwhile, SEVP announced on April 5, 2016, that it terminated initial and active student records of any nonimmigrant student enrolled at UNNJ, as well as many active nonimmigrant students who have since transferred from UNNJ.

The affected students have released the following statement:

*On April 5, 2016, Department of Homeland Security (DHS) arrested and detained a number of individuals across the country in connection with the University of Northern New Jersey (UNNJ), a sham school set up in 2013 by DHS to expose suspected student visa fraud. DHS alleged that students who had, at any point, enrolled at UNNJ had unlawfully conspired with "brokers" and recruiters to knowingly commit visa fraud.*

*We, the students, did not knowingly conspire to break the law. We relied on the representations that UNNJ was properly certified and accredited to accept foreign students and believed that the school operated lawfully. Since arriving in the U.S., we have worked very hard to follow the law.*

*Since the DHS arrests and detentions, we have suffered unimaginable distress and pain. We have encountered confused misunderstandings and misinterpretations about what allegedly happened and our role in these alleged crimes.*

*After meetings and discussions, we, the involved students, felt that we needed to speak up and to begin defending ourselves from these government orchestrated wrongs.*

*We, the students, declare the following:*



- 1. We, the students, have been victimized, manipulated and exploited. We were misunderstood, misled, and hurt in the UNNJ process and subsequent federal sting operation. We have been beguiled out of tens-of-millions of dollars to enroll at the school, and we are now accused of conspiring to commit visa fraud. Our legal status in the U.S. has been terminated, and we are ordered to depart this country by the same individuals, the same government entity that led us to believe the UNNJ was lawful in the first place.*
- 2. We, the students, had neither actual nor constructive knowledge that UNNJ was a fake school, we did not know that the enrollment process, arrangement and the operation of UNNJ was illegal. UNNJ staff members (federal agents) and involved recruiting companies constantly acknowledged, expressed, or reaffirmed the lawful status UNNJ to students. UNNJ was officially certified by DHS and authorized by multiple government agencies and credible nonprofit organizations, including the State of New Jersey, Department of Education (UNNJ has a domain name ending with edu), Accrediting Commission of Career Schools and Colleges (ACCSC), the Commission of English Language Accreditation (CEA), etc. These government agencies and nonprofits used its authority and credibility to knowingly provide false information to the public about the fraudulent university DHS has created. We, the students, trusted these representations from the government and nonprofits. We were misled.*
- 3. UNNJ staff members (federal agents) and involved recruiting companies constantly misled and cheated us, the students, by providing untrue, incorrect, and inaccurate information for different forms, on the enrollment process, and the operation of the school.*
- 4. We, the students, request the help and intervention of all of the respective consulates and embassies of our home countries to protect the rights and interests of its citizens abroad.*
- 5. We, therefore, in order to protect our rights, reserve the right to pursue legal action.*
- 6. We, the students, call on all the students who are also the victims, to band together and protect our rights. Please follow us on [Twitter@UNNJAlumni](#).*

The announcement is at

<https://www.ice.gov/news/releases/21-charged-fraudulently-enabling-hundreds-foreign-nationals-remain-us-through-fake->. A related announcement from the Department of Justice's U.S. Attorney's Office for the District of New Jersey is at <https://www.justice.gov/usao-nj/pr/21-defendants-charged-fraudulently-enabling-hundreds-foreign-nationals-remain-united>.

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## 7. Firm In The News

From among a pool of 637 of the world's leading practitioners, across 43 jurisdictions and 384 law firms, [Cyrus Mehta](#) and [Cora-Ann Pestaina](#) are listed in Who's Who Corporate Immigration 2016. Mr. Mehta was listed in the Most Highly Regarded Individuals (North America). Mr. Mehta won "[Lawyer of the Year](#)" in the Who's Who Corporate Immigration category. The [report](#) calls Mr. Mehta "truly sensational" and "one of the best in the world" when it comes to dealing with complex international corporate immigration issues. The report goes on to state, "longside him, Cora-Ann Pestaina is known for her "sharp mind and intellect" and is commended for providing "tailored advice to clients' needs".

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