



SEPTEMBER 2016 IMMIGRATION UPDATE

Posted on September 6, 2016 by Cyrus Mehta

Headlines:

1. **USCIS Proposes Rule on Parole for Certain International Entrepreneurs**– USCIS has published a proposed rule to allow certain international entrepreneurs to be considered for parole (temporary permission to be in the United States) so they may start or scale their businesses in the United States.
2. **[ETA Announces iCERT Enhancement to Streamline H-2A, H-2B Processes for Employers](#)** – The iCERT system now permits submission of electronic documentation at the time of filing and while an H-2A or H-2B application is pending review.
3. **[OFLC Publishes Names, Other Info on Foreign Labor Recruiters](#)** – By providing the Foreign Labor Recruiter List, OFLC said the agency "is providing a greater level of transparency to the H-2B worker recruitment process and facilitating information sharing between the Department and other agencies and the public."
4. **[USCIS Reminds About Immigration Relief in Wake of Louisiana Flooding](#)** – USCIS issued a reminder of immigration relief measures that may help people affected by unforeseen circumstances, such as disasters like the recent severe storms and flooding in Louisiana.
5. **[USCIS Announces End of H-1B Workload Transfer Transition Period](#)** – USCIS announced that the H-1B workload transfer transition period ended August 31, 2016.
6. **[September Visa Bulletin Shows Movement in Final Action Dates](#)** – The Department of State's Visa Bulletin for the month of September 2016 shows much movement in the final action dates for various employment categories. For example, in August, the EB-1 final action date for China was January 1, 2010; in September it is Current.

7. **[USCIS To Allow Additional Applicants for Provisional Waiver Process](#)** – USCIS announced a final rule, effective August 29, 2016, that expands the existing provisional waiver process to allow certain individuals who are family members of U.S. citizens and lawful permanent residents (LPRs) and who are statutorily eligible for immigrant visas to more easily navigate the immigration process. USCIS said it expects to update its Policy Manual in the coming weeks to provide guidance on how it makes "extreme hardship" determinations.
8. **DHS Announces 18-Month Redesignation, Extension of TPS for Syria** – For current Syria TPS beneficiaries, the 60-day re-registration period began August 1, 2016, and runs through September 30, 2016. Certain Syrian nationals and persons without nationality who last habitually resided in Syria may apply for TPS during the 180-day initial registration period that began August 1, 2016, and runs through January 30, 2017.

Details:

1. **USCIS Proposes Rule on Parole for Certain International Entrepreneurs**

U.S. Citizenship and Immigration Services (USCIS) has published a proposed rule allowing certain international entrepreneurs to be considered for parole (temporary permission to be in the United States) so they may start or scale their businesses in the United States.

The proposed rule would allow the Department of Homeland Security (DHS) to use its existing discretionary statutory parole authority for entrepreneurs of startup entities whose stay in the United States would provide a "significant public benefit through the substantial and demonstrated potential for rapid business growth and job creation." Under this proposed rule, DHS may parole, on a case-by-case basis, eligible entrepreneurs of startup enterprises:

- Who have a significant ownership interest in the startup (at least 15 percent) and have an active and central role to its operations;
- Whose startup was formed in the United States within the past three years; and
- Whose startup has substantial and demonstrated potential for rapid business growth and job creation, as evidenced by:
 - Receiving significant investment of capital (at least \$345,000) from

certain qualified U.S. investors with established records of successful investments;

- Receiving significant awards or grants (at least \$100,000) from certain federal, state, or local government entities; or
- Partially satisfying one or both of the above criteria in addition to other reliable and compelling evidence of the startup entity's substantial potential for rapid growth and job creation.

Under the proposed rule, entrepreneurs may be granted an initial stay of up to two years to oversee and grow their startup entities in the United States. A subsequent request for re-parole (for up to three additional years) would be considered only if the entrepreneur and the startup entity continue to provide a significant public benefit as evidenced by substantial increases in capital investment, revenue, or job creation.

USCIS proposes that once the application for entrepreneurial parole is approved, the applicant and family members must leave the United States to be granted parole; they may not change to nonimmigrant status within the United States. Proving eligibility as an International Entrepreneur will require a \$1,200 filing fee, completion of an Application for Entrepreneur Parole (Form I-941) and the submission of extensive evidence. USCIS will review the evidence and approve or deny the application with no right of rehearing or appeal.

Reaction. Some believe that venture capitalists and foreign entrepreneurs may be disappointed by this proposed rule. They may see the benefit of entrepreneurial parole as too little and too short in return for the substantial effort needed to meet the requirements. Moreover, they may be disappointed to learn that the USCIS proposal fails to take into account the harm associated with a revocation of parole (whether based on material business changes or otherwise) and the absence of any administrative or judicial review. Also disappointing is the fact that the proposed regulation would offer no pathway to lawful permanent resident status. However, if USCIS receives compelling and substantiated comments, the final rule could become a viable avenue to jump-starting innovation, job creation, and economic growth.

While this proposed rule may be useful for entrepreneurs to obtain temporary status in the United States, it does not provide any path to permanent residence. Entrepreneurs who want to live and work in the United States permanently will have to await guidance on a permanent residence

option—national interest waivers for entrepreneurs. Guidance on that is expected shortly. Stay tuned.

The U.S. Alliance for International Entrepreneurs (USAIE) has written a summary and initial analysis of the proposed international entrepreneurs rule, available on the USAIE website at <http://usaie.org/uscis-proposes-international-entrepreneur-rule-usaie-summary/>.

The Firm's blog by Cyrus D. Mehta, *Harmonious Coexistence: Parole for International Entrepreneurs and Entrepreneur Pathways Under Existing Visas*, is available at <http://blog.cyrusmehta.com/2016/09/harmonious-co-existence-parole-for-international-entrepreneurs-and-entrepreneur-pathways-under-existing-visas.html>.

Meanwhile, the notice of proposed rulemaking in the Federal Register invites public comment for 45 days, after which USCIS will address the comments received. The proposed rule does not take effect with the publication of the notice of proposed rulemaking. It will take effect on the date indicated in the final rule when it is published in the Federal Register. The proposed rule is at <https://www.federalregister.gov/articles/2016/08/31/2016-20663/international-entrepreneur-rule>.

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2. ETA Announces iCERT Enhancement to Streamline H-2A, H-2B Processes for Employers

The Department of Labor's Employment and Training Administration (ETA) has implemented a new enhancement to the iCERT Visa Portal System related to the submission of applications for temporary labor certification under the H-2A and H-2B temporary visa programs. The enhancement is intended to reduce burdens on employers and streamline processing of applications. As of August 26, 2016, the iCERT system permits submission of electronic documentation at the time of filing and while an H-2A or H-2B application is pending review.

ETA believes this new feature will eliminate the need for the employer (or, if applicable, its authorized agent or attorney) to submit responsive documents via U.S. mail, email, or fax, and will result in a more efficient review of applications by connecting the responsive documents directly to the Office of Foreign Labor Certification (OFLC) analysts assigned to the application.

ETA also noted that this new feature will enable an iCERT account holder to view all its pending H-2A or H-2B applications and select the application for which it wishes to upload documents electronically. Once a pending application is selected, the iCERT account holder associates one or more electronic documents with a response type (e.g., Response to NOD, Response to NOA) for more efficient storage and retrieval by the OFLC analyst assigned to the application. To maximize electronic security, the iCERT system will only accept electronic documents in Microsoft Word (.doc or .docx), Adobe Acrobat Portable Document Format (.pdf), or text (.txt) file formats.

The announcement is at <https://www.foreignlaborcert.doleta.gov/>. Additional details are at https://www.foreignlaborcert.doleta.gov/pdf/H-2A_H-2B_ElectronicDocumentUpload_iCERT.pdf. To review the features of this new iCERT System enhancement, see the *Quick Start Technical Guide* at https://www.foreignlaborcert.doleta.gov/pdf/iCERT_Quick-Start-Technical-Guide_Customer_Document_Upload_Enhancement.pdf.

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3. OFLC Publishes Names, Other Info on Foreign Labor Recruiters

The Office of Foreign Labor Certification (OFLC) is publishing a list of the names of foreign labor recruiters and the identity and location of persons or entities hired by or working for the recruiter that employers have indicated they engaged, or planned to engage, in recruiting prospective H-2B nonagricultural workers to perform the work described on their Form ETA-9142B, H-2B Application for Temporary Employment Certification.

By providing this Foreign Labor Recruiter List, OFLC said the agency "is providing a greater level of transparency to the H-2B worker recruitment process and facilitating information sharing between the Department and other agencies and the public." Among other things, by maintaining and publishing a list of foreign labor recruiters, OFLC said it "is better poised to enforce recruitment violations, and workers are better protected against fraudulent recruiting schemes by enabling them to verify whether a recruiter is in fact recruiting for legitimate H-2B job opportunities in the United States." OFLC noted that it "does not endorse or vouch for any foreign labor agent or recruiter" on the list, and inclusion does not signify that the recruiter is

complying with the H-2B program. "The list is simply a list of current recruiters being used by employers in the H-2B program," OFLC said.

OFLC noted that the list identifies the last six digits of the Chicago National Processing Center case number associated with the Form(s) ETA-9142B in which an employer identified the foreign labor recruiter. The six-digit number can be used to look up the H-2B Job Order and Application for Temporary Employment Certification in the H-2B Public Job Registry located at <https://icert.doleta.gov/index.cfm?event=ehLCJRExternal.dspQuickJobOrderSearch> by entering the number into the ETA Case Number field, selecting "H-2B" in the Case Type field, and clicking on "Search."

The list, which will be updated quarterly, is at https://www.foreignlaborcert.doleta.gov/pdf/Foreign_Labor_Recruiter_List.pdf. FAQs on the list have been posted as "2015 H-2B IFR FAQs Round 16" at https://www.foreignlaborcert.doleta.gov/pdf/Round-16_Foreign_Labor_Recruiter.pdf.

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4. USCIS Reminds About Immigration Relief in Wake of Louisiana Flooding

U.S. Citizenship and Immigration Services (USCIS) issued a reminder on August 19, 2016, of immigration relief measures that may help people affected by unforeseen circumstances, such as disasters like the recent severe storms and flooding in Louisiana.

USCIS noted that these measures may be available upon request:

- Change of nonimmigrant status or extension of nonimmigrant stay 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 requesters should "explain how the severe storms or flooding created a need for the requested relief." The announcement is at <https://www.uscis.gov/news/alerts/uscis-alerts-customers-affected-severe-storms-and-flooding-louisiana-available-immigration-relief>. For more information, see <https://www.uscis.gov/humanitarian/special-situations>.

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5. USCIS Announces End of H-1B Workload Transfer Transition Period

U.S. Citizenship and Immigration Services (USCIS) announced that the H-1B workload transfer transition period ended August 31, 2016.

On July 1, 2016, as part of a workload transfer from the California and Vermont Service Centers, the Nebraska Service Center (NSC) began accepting certain H-1B and H-1B1 (Chile/Singapore Free Trade) I-129 petitions. The NSC also began accepting I-539 and I-765 applications for certain H-4 nonimmigrants that are concurrently filed with an I-129.

The California and Vermont Service Centers continued to accept these I-129 petitions, and any concurrently filed I-539 and I-765 applications, during the transition period until August 31. Starting September 1, only the NSC is accepting them. USCIS may reject any misfiled petitions or applications.

The following Form I-129 same-employer-without-change petitions have not been transferred to the Nebraska Service Center and will continue to be accepted only at the California Service Center, if:

- The petition is for an employer that is statutorily exempt from the cap; or
- The beneficiary is employed at a qualifying cap-exempt institution, entity or organization.

See filing addresses and cap-exempt filing instructions at <https://www.uscis.gov/i-129-addresses>. The latest USCIS announcement is at

<https://www.uscis.gov/news/alerts/reminder-h-1b-workload-transfer-transition-period-ends-aug-31-2016>. The details released July 1, 2016, are at <https://www.uscis.gov/news/alerts/nebraska-service-center-accept-certain-h-1b-petitions>.

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6. September Visa Bulletin Shows Movement in Final Action Dates

The Department of State's Visa Bulletin for the month of September 2016 shows much movement in the final action dates for various employment categories. For example, in August, the EB-1 final action date for China was January 1, 2010; in September it is Current. The August EB-2 final action date for China was January 1, 2010; in September it has moved forward to June 1, 2013. Dates in several categories were specified in August for El Salvador, Guatemala, and Honduras; in September, that column has been dropped and all chargeability areas except those listed for China-mainland born, India, Mexico, and Philippines are Current.

The Visa Bulletin for September 2016 is at

<https://travel.state.gov/content/visas/en/law-and-policy/bulletin/2016/visa-bulletin-for-september-2016.html>.

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7. USCIS To Allow Additional Applicants for Provisional Waiver Process

U.S. Citizenship and Immigration Services (USCIS) announced a final rule, effective August 29, 2016, that expands the existing provisional waiver process to allow certain individuals who are family members of U.S. citizens and lawful permanent residents (LPRs) and who are statutorily eligible for immigrant visas to more easily navigate the immigration process.

USCIS noted that the provisional waiver process "promotes family unity by reducing the time eligible individuals are separated from their family members while they complete immigration processing abroad, while also improving administrative efficiency."

The agency said the final rule builds on a process established in 2013 to support family unity. Under that process, certain immediate relatives of U.S. citizens can apply for provisional waivers of the unlawful presence ground of inadmissibility, based on the extreme hardship their U.S. citizen spouses or

parents would suffer if the waiver were not granted. The final rule expands eligibility for the provisional waiver process to all individuals who are statutorily eligible for the waiver of the unlawful presence ground of inadmissibility. Until now, only immediate relatives of U.S. citizens were eligible to seek such provisional waivers before departing the United States for the processing of their immigrant visas. Those eligible for the provisional waiver process under the 2013 rule are only a subset of those eligible for the waiver under the statute.

To qualify for a provisional waiver, applicants must establish that their U.S. citizen or lawful permanent resident spouses or parents would experience "extreme hardship" if the applicants are not allowed to return to the United States.

USCIS said it expects to update its Policy Manual "in the coming weeks" to provide guidance on how it makes "extreme hardship" determinations. The final rule also makes changes to Form I-601A, Application for Provisional Unlawful Presence Waiver. These changes will go into effect along with the final rule.

The USCIS announcement is at

<https://www.uscis.gov/news/news-releases/uscis-allow-additional-applicants-provisional-waiver-process>. The final rule is at

<https://www.gpo.gov/fdsys/pkg/FR-2016-07-29/pdf/2016-17934.pdf>. The updated I-601A is posted on USCIS's website at uscis.gov/i-601a.

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8. DHS Announces 18-Month Redesignation, Extension of TPS for Syria

The Department of Homeland Security has redesignated Syria for temporary protected status (TPS) and extended the existing Syria TPS designation from October 1, 2016, through March 31, 2018. Nationals of Syria, or persons without nationality who last habitually resided in Syria, can register or re-register for TPS in accordance with the notice.

For current Syria TPS beneficiaries, the 60-day re-registration period began August 1, 2016, and runs through September 30, 2016. Syrian nationals and persons without nationality who last habitually resided in Syria and have: (1) continuously resided in the United States since August 1, 2016, and (2) been continuously physically present in the United States since October 1,

2016, may apply for TPS during the 180-day initial registration period that began August 1, 2016, and runs through January 30, 2017.

The 18-month extension allows TPS re-registrants to apply for a new employment authorization document (EAD). Eligible Syria TPS beneficiaries who re-register during the 60-day period and request a new EAD will receive one with an expiration date of March 31, 2018. 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 for an additional six months current TPS Syria EADs with a September 30, 2016, expiration date. These existing EADs are now valid through March 31, 2017.

The announcement, which includes additional details, is at <https://www.uscis.gov/news/news-releases/dhs-announces-18-month-redesign-ation-and-extension-temporary-protected-status-syria>.

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