CYRUS D. MEHTA & PARTNERS PLLC
US IMMIGRATION & NATIONALITY LAW

MID-OCTOBER 2016 IMMIGRATION UPDATE

Posted on October 20, 2016 by Cyrus Mehta

Headlines:

1. **U.S. Supreme Court Denies Rehearing in *U.S. v. Texas*** – The Court's refusal to reconsider the case means that DAPA and expanded DACA remain blocked. The original DACA program is unaffected.
2. **USCIS Increases Validity of Work Permits to Two Years for Asylum Applicants** – USCIS has increased the validity period for initial or renewal Employment Authorization Documents for asylum applicants from one year to two years.
3. **ABIL Submits Comments on DOJ Proposed Antidiscrimination Rule** – ABIL argued that, among other things, the proposed rule, without adequate or convincing justification, would *inter alia* unlawfully expand the class of individuals protected against citizenship status discrimination to include all non-citizens, and unfairly expand the liability of employers and other respondents alleged to have engaged in unfair immigration-related employment practices.
4. **Firm In The News...**

Details:

1. **U.S. Supreme Court Denies Rehearing in *U.S. v. Texas***

The U.S. Supreme Court denied rehearing of *United States v. Texas* on October 3, 2016. The Court's refusal to reconsider the case, on which it was deadlocked 4-4 in June, means that several Obama administration deferred action programs remain blocked by the U.S. Court of Appeals for the Fifth Circuit's order. The programs include Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) and expanded Deferred Action for Childhood Arrivals (DACA). The original DACA program is unaffected and has

continued since 2012.

President Barack Obama's nomination of Merrick Garland to the Supreme Court has languished for more than 200 days as Senate Republican leaders have refused to take up the matter, holding out for the next presidential election. In its petition for rehearing, the Obama administration had argued that the Court should grant rehearing to provide for a decision when the ninth Justice is appointed, rather than leaving in place "a nationwide injunction of such significance":

Unless the Court resolves this case in a precedential manner, a matter of "great national importance" involving an "unprecedented and momentous" injunction barring implementation of the Guidance will have been effectively resolved for the country as a whole by a court of appeals that has divided twice, with two judges voting for petitioners and two for respondent States.

Other litigation is progressing or may be taken now that the Supreme Court has decided not to take up the case again. Meanwhile any efforts toward comprehensive immigration reform continue to languish. Stay tuned.

The petition for rehearing is at http://www.scotusblog.com/wp-content/uploads/2016/08/15-674-Petition-for-Rehearing.pdf. For more information on DAPA and DACA, see https://www.ice.gov/daca. For more on *U.S. v. Texas*, see http://www.scotusblog.com/case-files/cases/united-states-v-texas/.

Back to Top

2. **USCIS Increases Validity of Work Permits to Two Years for Asylum Applicants**

Effective October 5, 2016, U.S. Citizenship and Immigration Services (USCIS) has increased the validity period for initial or renewal Employment Authorization Documents for asylum applicants from one year to two years. Applicants with pending asylum claims file applications for employment authorization (Forms I-765) under category "(c)(8)." This change applies to all (c)(8)-based applications that are pending as of October 5, 2016, and all such applications filed on or after October 5, 2016.

The announcement is at https://www.uscis.gov/news/alerts/uscis-increases-validity-work-permits-two-ye

ars-asylum-applicants.

Back to Top

3. **ABIL Submits Comments on DOJ Proposed Antidiscrimination Rule**

The Alliance of Business Immigration Lawyers (ABIL) recently submitted comments on the Department of Justice's proposed rule, "Standards and Procedures for the Enforcement of the Immigration and Nationality Act." Among other things, the proposed rule would provide a new definition of the phrase "citizenship status," amend a discriminatory intent requirement for employers, expand the time periods for investigation and deadlines to file discrimination complaints, and change the definition of "charging party."

ABIL's comments note:

he proposed rule, without adequate or convincing justification, would *inter alia* unlawfully expand the class of individuals protected against citizenship status discrimination to include all non-citizens, and unfairly expand the liability of employers and other respondents alleged to have engaged in unfair immigration-related employment practices. These changes contravene the statutory text and the legislative history of the governing statutes, and would impose unreasonable burdens on employers, even though an employer's actions were not motivated by immigration-related animus or hostility. The proposed rule would also substantially expand the authority of the Special Counsel to investigate allegations of immigration-related unfair employment practices and the time periods within which individuals and the Special Counsel must file complaints against employers with the Office of the Chief Administrative Hearing Officer (OCAHO).

ABIL member Angelo Paparelli wrote the comments on behalf of ABIL and submitted them to Attorney General Loretta Lynch and the Department of Justice on October 13, 2016. The proposed rule is at 81 Fed. Reg. 53965, with deadline extended at 81 Fed. Reg. 63155.

Back to Top

4. **Firm In The News**

Cyrus Mehta was a Speaker, *Common Ethical Issues and Trends In Immigration Practice*, AILA Ohio Chapter, Fall CLE Conference, Columbus, OH, October 7, 2016.

David Isaacson was a Panelist, *Fighting the Agency in CARRP and Other Delayed Cases*, 2016 AILA Advanced Business and Removal Issues Conference, New York, NY, October 10, 2016.

Cyrus Mehta, Cora-Ann V. Pestaina and **David Isaacson** are included in New York Super Lawyers 2016. (This listing is not approved by the Supreme Court of New Jersey.)

Back to Top