



## MID-NOVEMBER 2016 IMMIGRATION UPDATE

*Posted on November 16, 2016 by Cyrus Mehta*

### Headlines:

1. [Atlanta NPC To Issue PERM Notifications Via Email Beginning in December](#) – Starting December 1, 2016, the ANPC also will receive via email ETA Form 9089 audit responses and responses to Requests for Information, Additional Audit Information Requests, and Notices of Decisions for Appeals. The Department of Labor's Office of Foreign Labor Certification offered related tips.
2. [St. Vincent and the Grenadines Added to H-2A, H-2B Visa Programs](#) – St. Vincent and the Grenadines has been added to the list of countries whose nationals are eligible to participate in the H-2A and H-2B visa programs for the coming year.
3. [IRS Announces Changes to Individual Taxpayer ID Program](#) – The changes require some taxpayers to renew their ITINs, which the IRS encourages people to do early.
4. [USCIS Updates Guidance on Health-Related Grounds of Inadmissibility](#) – USCIS has updated guidance regarding health-related grounds of inadmissibility in accordance with an HHS final rule.
5. [Firm In The News...](#)

### Details:

1. **Atlanta NPC To Issue PERM Notifications Via Email Beginning in December**

The Department of Labor's Office of Foreign Labor Certification (OFLC) announced on November 1, 2016, that the Atlanta National Processing Center (ANPC) will begin issuing PERM notification letters via email beginning December 1, 2016. OFLC said this will ensure that PERM stakeholders receive

ETA Form 9089 application determination notifications in a timely, cost-effective manner without mail delivery delays.

OFLC said that those awaiting such notifications should add [sr.processing@dol.gov](mailto:sr.processing@dol.gov) and [plc.atlanta@dol.gov](mailto:plc.atlanta@dol.gov) to the address book or safe list in the recipient's email system to avoid being filtered as spam. In addition, changes in email addresses for the authorized representative or employer should be emailed to either [sr.processing@dol.gov](mailto:sr.processing@dol.gov) (Supervised Recruitment cases) or [plc.atlanta@dol.gov](mailto:plc.atlanta@dol.gov) (all other correspondence). Provide the case number along with the updated contact information.

Stakeholders will receive the following letters/notifications via email:

- Audit Notification Letters
- Denial Notification Letters
- Requests for Information Letters
- Additional Audit Information Requests
- Withdrawal Letters
- Notices of Decisions from Appeals

OFLC noted that certified ETA Form 9089 PERM application letters will not be sent electronically due to the certification's security paper requirements currently in place with U.S. Citizenship and Immigration Services.

Starting December 1, 2016, the ANPC will receive via email ETA Form 9089 audit responses and responses to Requests for Information, Additional Audit Information Requests, and Notices of Decisions for Appeals. Senders should ensure that each emailed response is no larger than 20MB. Email responses larger than 20MB should be separated into two or more documents of fewer than 20MB in size, indicated on the subject line of the email. For example, <Case Number>\_Audit Response\_1 of 3.

OFLC offered the following summary of tips:

- Do not combine multiple audit responses for different cases in one submission packet.
- Direct any questions via email to [sr.processing@dol.gov](mailto:sr.processing@dol.gov) (Supervised Recruitment inquiries) or [plc.atlanta@dol.gov](mailto:plc.atlanta@dol.gov) (all other inquiries) and include the case number in the subject line.
- For audit responses specifically; scan, tab, or clearly identify the

documentation into the following categories:

1. Cover Letter
2. Recruitment Report and any other supporting documentation
3. Business Necessity and other supporting documentation
4. Recruitment Content, including copies of newspaper advertisements, Notice of Filing, Job Order, and professional advertisements
5. Copy of Audit Letter (if applicable)
6. Resumes, including any applications, evaluations, and other supporting documentation
7. Prevailing Wage (if applicable)
8. Affidavits (if applicable)
9. Signed ETA Form 9089 (if applicable)
10. Postage Receipt (if applicable)

The notice is at <https://www.foreignlaborcert.doleta.gov/news.cfm> (scroll to "November 1, 2016. Electronic Notification of PERM Letters").

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## **2. St. Vincent and the Grenadines Added to H-2A, H-2B Visa Programs**

U.S. Citizenship and Immigration Services (USCIS) and the Department of Homeland Security (DHS), in consultation with the Department of State, have added St. Vincent and the Grenadines to the list of countries whose nationals are eligible to participate in the H-2A and H-2B visa programs for the coming year.

The H-2A and H-2B visa programs allow U.S. employers to bring foreign nationals to the United States to fill temporary agricultural and nonagricultural jobs, respectively. Typically, USCIS only approves H-2A and H-2B petitions for nationals of countries DHS has designated as eligible to participate in the programs. USCIS, however, may approve H-2A and H-2B petitions for nationals of countries **not** on the list if it is determined to be in the interest of the United States.

The notice listing the eligible countries was published in the Federal Register on October 26, 2016, at

<https://www.gpo.gov/fdsys/pkg/FR-2016-10-26/html/2016-25872.htm>.

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### 3. IRS Announces Changes to Individual Taxpayer ID Program

The Internal Revenue Service recently announced changes related to revisions to the Individual Taxpayer Identification Number (ITIN) program made under a new law. The changes require some taxpayers to renew their ITINs, which the IRS encourages people to do early.

Under the new law, ITINs that have not been used on a federal tax return at least once in the last three years will no longer be valid for use on a tax return unless renewed by the taxpayer. In addition, ITINs issued before 2013 that have been used on a federal tax return in the last three years must be renewed starting this fall. The IRS is putting in place a rolling renewal schedule.

If taxpayers have an expired ITIN and do not renew before filing a tax return in 2017, they could face a refund delay and may be ineligible for certain tax credits until the ITIN is renewed, the IRS warned.

The IRS emphasized that ITIN holders do not need to take action if they don't need to file a tax return next year. Two key groups of ITIN holders may need to renew an ITIN so it will be in effect for returns filed in 2017:

- *Unused ITINs.* ITINs not used on a federal income tax return in the last three years (covering 2013, 2014, or 2015) will no longer be valid to use on a tax return as of January 1, 2017. ITIN holders in this group who need to file a tax return next year will need to renew their ITINs. The renewal period began October 1, 2016.
- *Expiring ITINs.* ITINs issued before 2013 will begin expiring this year, and taxpayers will need to renew them on a rolling basis. The first ITINs that will expire under this schedule are those with middle digits of 78 and 79 (Example: 9XX-78-XXXX). The renewal period for these ITINs began October 1, 2016. The IRS said it is mailing letters to this group of taxpayers to inform them of the need to renew their ITINs if they need to file a tax return and explain steps they need to take. The schedule for expiration and renewal of ITINs that do not have middle digits of 78 and 79 will be announced at a future date, the IRS said.

How to renew. Only ITIN holders who need to file a tax return must renew their ITINs. Others do not need to take any action.

To renew an ITIN, taxpayers must complete Form W-7, Application for IRS Individual Taxpayer Identification Number, follow the instructions, and include all information and documentation required. To reduce the burden on taxpayers, the IRS is not requiring individuals renewing an ITIN to attach a tax return when submitting their Form W-7. Taxpayers are reminded to use the newest version of the Form W-7 ("Rev. 9-2016") available at the time of renewal.

There are three methods for submitting an W-7 application package to renew an ITIN:

- Mail the Form W-7, along with the original identification documents or certified copies by the agency that issued them, to the IRS address listed on the form (identification documents will be returned within 60 days);
- Use one of the many IRS-authorized Certified Acceptance Agents (see <https://www.irs.gov/individuals/acceptance-agent-program>), or Acceptance Agents around the country; or
- In advance, call and make an appointment at an IRS Taxpayer Assistance Center (see <https://www.irs.gov/uac/tac-locations-where-in-person-document-verification-is-provided>) in lieu of mailing original identification documents to the IRS.

Family Option. The IRS is offering a family option for ITIN renewal. If any individuals having an ITIN middle digit of 78 or 79 receive a renewal letter from the IRS, they can choose to renew the ITINs of all of their family members at the same time rather than doing them separately over several years. Family members include the tax filer, the spouse, and any dependents claimed on their tax return.

The IRS said it is working closely with a variety of groups to share information about the ITIN changes and help raise awareness about the new guidelines. The IRS will be providing additional information and material to share with these groups and taxpayers in the near future.

New requirement for dependents. Beginning October 1, 2016, the IRS will no longer accept passports that do not have a date of entry into the United States as stand-alone identification documents for dependents from countries other than Canada or Mexico or dependents of military members overseas. Affected applicants now must submit either U.S. medical records for dependents under

age six or U.S. school records for dependents under age 18 along with their passports. Dependents aged 18 and over can submit a passport along with a rental or bank statement or a utility bill listing the applicant's name and U.S. address.

IRS noted that ITINs are for federal tax purposes only and are not intended to serve any other purpose. ITINs that are only used on information returns filed with the IRS by third parties do not need to be renewed. An ITIN does not authorize a person to work in the United States or provide eligibility for Social Security benefits or the Earned Income Tax Credit. ITINs are not valid identification outside the tax system and do not establish immigration status.

The IRS announcement is at

<https://www.irs.gov/uac/irs-works-to-help-taxpayers-affected-by-itin-changes-renewals-begin-in-october>. Frequently asked questions are at <https://www.irs.gov/individuals/itin-expiration-faqs>. The ITIN changes are required by the Protecting Americans from Tax Hikes (PATH) Act enacted by Congress in December 2015. These provisions, along with new procedures to help taxpayers navigate these changes, are outlined in IRS Notice 2016-48 at <https://www.irs.gov/pub/irs-drop/n-16-48.pdf>. More information is at <https://www.irs.gov/uac/newsroom/irs-now-accepting-itin-renewal-applications-taxpayers-encouraged-to-act-soon-to-avoid-processing-delays-in-2017>.

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#### **4. USCIS Updates Guidance on Health-Related Grounds of Inadmissibility**

U.S. Citizenship and Immigration Services (USCIS) recently announced that it has updated guidance regarding health-related grounds of inadmissibility in accordance with a final rule updating Department of Health and Human Services regulations published in early 2016.

The guidance in the *USCIS Policy Manual*:

- Updates the definition of a Class A condition to include failure to present documentation of having received vaccinations against vaccine-preventable diseases.
- Updates the definition of a Class B condition to "health conditions, diseases, or disability serious in degree or permanent in nature."

- Updates the definition of physical and mental disorders with associated harmful behavior and the definition of drug abuse and drug addiction.
- Removes three medical conditions (chancroid, granuloma inguinale, and lymphogranuloma venereum) from the list of communicable diseases of public health significance that would render an applicant for immigration benefits inadmissible on health-related grounds of inadmissibility.

USCIS said the guidance in the manual "is controlling and supersedes any prior guidance."

USCIS's related policy alert is at

<https://www.uscis.gov/policymanual/Updates/20161102-MedicalConditions.pdf>.

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#### 4. Firm In The News

**Cyrus D. Mehta** was a Speaker, *Ethical Considerations Arising in Representation of Immigrant Victims of Human Trafficking*, Human Trafficking in Immigrant Communities: Current Issues in Preparing Petitions for T Nonimmigrant Status, Practising Law Institute, New York, NY, November 9, 2016

**Cyrus D. Mehta** was a Speaker, *L & E Visas: What, Where and When*, AILA New York Chapter, NY, November 7, 2016.

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