



## DECEMBER 2016 IMMIGRATION UPDATE

*Posted on December 1, 2016 by Cyrus Mehta*

### Headlines:

1. [USCIS Publishes Long-Awaited Final Rule on Certain Employment-Based Visa Programs](#) – USCIS has issued a final rule, effective January 17, 2017, to provide greater flexibility for high-skilled foreign professionals. The new regulations also codify current informal administrative guidance about statutory provisions added in 2000.
2. [USCIS Revises I-9 Employment Eligibility Verification Form](#) – By January 22, 2017, employers must use only the new version of the I-9, dated 11/14/2016 N. Until then, they can continue to use either the version dated 03/08/2013 N or the new version.
3. [USCIS Announces Final Rule on Fee Increases, Changes](#) – USCIS recently published a final rule to increase the fees required for most immigration applications and petitions. The new fees will be effective December 23, 2016.
4. [ABIL Global: United Kingdom](#) – The United Kingdom is changing its immigration rules. Also, the High Court has ruled on a key Brexit case.
5. **Firm In The News...**

### Details:

1. **USCIS Publishes Long-Awaited Final Rule on Certain Employment-Based Visa Programs**

U.S. Citizenship and Immigration Services (USCIS) has issued a final rule to provide greater flexibility for high-skilled foreign professionals. The new regulations also codify current informal administrative guidance about statutory provisions added in 2000. The regulations take effect on January 17, 2017.

USCIS previously made many of these clarifications through a series of non-binding policy memoranda over the past 15 years, with no definitive rules in place.

USCIS said the final rule is intended to modernize and improve several aspects of certain employment-based nonimmigrant and immigrant visa programs. USCIS has also amended the regulations to better enable U.S. employers to hire and retain certain foreign workers who are beneficiaries of approved employment-based immigrant visa petitions and are waiting to become lawful permanent residents.

Among other things, the final rule is intended to:

- Clarify and improve longstanding policies and practices implementing sections of the American Competitiveness in the Twenty-First Century Act and the American Competitiveness and Workforce Improvement Act related to certain foreign workers, which USCIS said will enhance consistency in adjudication.
- Better enable U.S. employers to employ and retain high-skilled workers who are beneficiaries of approved employment-based immigrant visa petitions (Form I-140 petitions) while also providing stability and job flexibility to these workers. The rule increases the ability of these workers to further their careers by accepting promotions, changing positions with current employers, changing employers, and pursuing other employment opportunities.
- Improve job portability for certain beneficiaries of approved Form I-140 petitions by maintaining a petition's validity under certain circumstances despite an employer's withdrawal of the approved petition or the termination of the employer's business.
- Clarify and expand when individuals may keep their priority dates when applying for adjustment of status to lawful permanent residence.
- Allow certain high-skilled individuals in the United States with E-3, H-1B, H-1B1, L-1, or O-1 nonimmigrant status, including any applicable grace period, to apply for employment authorization for a limited period if:
  1. They are the principal beneficiaries of an approved I-140 petition,
  2. An immigrant visa is not authorized for issuance for their priority date, and
  3. They can demonstrate that compelling circumstances exist that justify the

agency's issuing an employment authorization document in its discretion.

Such employment authorization may only be renewed in limited circumstances and only in one-year increments.

- Clarify various policies and procedures related to the adjudication of H-1B petitions, including, among other things, providing H-1B status beyond the six-year authorized period of admission, determining cap exemptions and counting workers under the H-1B cap, H-1B portability, licensure requirements, and protections for whistleblowers.
- Establish two grace periods of up to 10 days for individuals in the E-1, E-2, E-3, L-1, and TN nonimmigrant classifications to provide a reasonable amount of time for these individuals to prepare to begin employment in the country and to depart the United States or take other actions to extend, change, or otherwise maintain lawful status.
- Establish a grace period of up to 60 consecutive days during each authorized validity period for certain high-skilled nonimmigrant workers when their employment ends before the end of their authorized validity period, so they may more readily pursue new employment and an extension of their nonimmigrant status.
- Automatically extend the employment authorization and validity of Employment Authorization Documents (EADs or Forms I-766) for certain individuals who apply on time to renew their EADs.
- Eliminate the regulatory provision that requires USCIS to adjudicate the Form I-765, Application for Employment Authorization, within 90 days of filing and that authorizes interim EADs in cases where such adjudications are not conducted within the 90-day time frame.

USCIS received nearly 28,000 comments on the proposed rule from a broad range of entities and individuals. Comments submitted by the Alliance of Business Immigration Lawyers are at [http://www.abil.com/news\\_detail.cfm?NEWS\\_ID=1390](http://www.abil.com/news_detail.cfm?NEWS_ID=1390).

The USCIS announcement is at <https://www.uscis.gov/news/news-releases/uscis-publishes-final-rule-certain-employment-based-immigrant-and-nonimmigrant-visa-programs>. The final rule is at <https://www.federalregister.gov/documents/2016/11/18/2016-27540/retention-of-eb-1-eb-2-and-eb-3-immigrant-workers-and-program-improvements->

[affecting-high-skilled.](#)

For our firm's commentary, See "[Analysis of Key Provisions of the High Skilled Worker Final Rule.](#)"

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## 2. USCIS Revises I-9 Employment Eligibility Verification Form

U.S. Citizenship and Immigration Services (USCIS) recently published a revised version of Form I-9, Employment Eligibility Verification. By January 22, 2017, employers must use only the new version, dated 11/14/2016 N. Until then, they can continue to use either the version dated 03/08/2013 N or the new version.

Among the changes in the new version, Section 1 asks for "other last names used" rather than "other names used," and streamlines certification for certain foreign nationals.

Other changes include:

- The addition of prompts to ensure information is entered correctly.
- The ability to enter multiple preparers and translators.
- A dedicated area for including additional information rather than having to add it in the margins.
- A supplemental page for the preparer/translator.

The instructions have been separated from the form, in line with other USCIS forms, and include specific instructions for completing each field.

USCIS said the revised I-9 is also easier to complete on a computer. Changes include drop-down lists and calendars for filling in dates, on-screen instructions for each field, access to the full instructions, and an option to clear the form and start over. When the employer prints the completed form, a quick response (QR) code is automatically generated, which can be read by most QR readers.

The announcement is at

<https://www.uscis.gov/news/news-releases/uscis-revises-form-i-9-used-all-new-hires-us>.

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## 3. USCIS Announces Final Rule on Fee Increases, Changes

U.S. Citizenship and Immigration Services (USCIS) recently published a final rule to increase the fees required for most immigration applications and petitions. The new fees will be effective December 23, 2016.

Fees will increase for the first time in six years by a weighted average of 21 percent for most applications and petitions. USCIS said these increases include the costs associated with fraud detection and national security, service and case processing, and providing services without charge to refugee and asylum applicants and to others eligible for fee waivers or exemptions.

The final rule includes a table summarizing current and new fees. Applications and petitions postmarked or filed on or after December 23 must include the new fees or USCIS will not accept them.

USCIS said it is also offering a reduced filing fee for certain naturalization applicants with limited means.

Highlights of the fee rule include:

- A fee increase of \$45, or 8 percent, from \$595 to \$640 for Form N-400, Application for Naturalization.
- A reduced filing fee of \$320 for naturalization applicants with family incomes greater than 150 percent but not more than 200 percent of the Federal Poverty Guidelines. For 2016, this means, for example, that a household of four with an income between \$36,000 and \$48,600 per year could pay the reduced fee. Those eligible may apply for this option using the new Form I-942, Request for Reduced Fee.
- A fee increase from \$550 or \$600 to \$1,170 for Form N-600, Application for Certificate of Citizenship, and N-600K, Application for Citizenship and Issuance of Certificate Under Section 322.
- A new fee of \$3,035 for Form I-924A, Annual Certification of Regional Center.

The USCIS announcement is at

<https://www.uscis.gov/news/news-releases/uscis-announces-final-rule-adjusting-immigration-benefit-application-and-petition-fees>.

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## **ABIL Global: United Kingdom**

*The United Kingdom is changing its immigration rules. Also, the High Court has ruled*

on a key Brexit case.

## Changes to Immigration Rules

On November 3, 2016, a Statement of Changes to the Immigration Rules was set before Parliament. In relevant part, the raft of reforms includes the first stage of a two-phase package of changes to Tier 2 of the Points-Based System (PBS). The majority of these changes affect applications made on or after November 24, 2016, and include:

### *Tier 2 (General)*

- The salary threshold for experienced workers is increasing to £25,000. New entrants will remain at £20,800 and some additional, minor exceptions apply.
- Individuals sponsored as Tier 2 (General) migrants before November 24, 2016, are only required to meet the previous salary threshold of £20,800.

### *Tier 2 (Intra-Company Transfer)*

- The salary threshold for Tier 2 (ICT—Short-Term Staff) is increasing to £30,000.
- The salary threshold for Tier 2 (ICT—Graduate Trainee) is decreasing to £23,000, and the number of places allocated per company annually for this subcategory is increasing from five to twenty.
- Tier 2 (ICT—Skills Transfer) is closed to new applicants.

## Ruling Issued on Brexit Case

In the case of *R (on the application of Gina Miller and Ors) v The Secretary of State for the European Union*, the High Court ruled that the government must first consult Parliament before giving notice of the UK's withdrawal from the European Union. The government might appeal. If the appeal is denied, it could block or delay the Prime Minister's proposed timetable of beginning 'Brexit' negotiations by March 2017.

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## 5. Firm In The News...

**Cyrus D. Mehta** was a Speaker, *I-140 Bombshells and Directed Recruitment*, 16<sup>th</sup> Annual Advanced Corporate Immigration Conference, New Jersey Institute for

Continuing Legal Education, A Division of the New Jersey State Bar Association,  
Newark, NJ, November 30, 2016.

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