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

JULY 2017 IMMIGRATION UPDATE

Posted on July 5, 2017 by Cyrus Mehta

Headlines:

1. **Supreme Court Partially Lifts Trump Travel Ban Preliminary Injunctions** – The Supreme Court plans to hear arguments in the related cases in October brought against the Trump administration in the U.S. Courts of Appeals for the Ninth and Fourth Circuits.
2. **USCIS Resumes Premium Processing for H-1B Petitions Filed for Conrad 30 Medical Doctors, Interested Government Agencies** – USCIS said it plans to resume premium processing of other H-1B petitions as workloads permit.
3. **International Entrepreneur Final Rule Expected To Be Delayed, Scrapped** – The Trump administration reportedly has decided to delay the rule's effective date until March 2018, and ultimately to rescind it.
4. **USCIS Redesigns Green Card Application** – The new Form I-485 and instructions "have been substantially updated to reduce complexity after collecting comments from the public and stakeholders," USCIS said.
5. **Minor Lies Can't Be Used to Revoke Citizenship, Supreme Court Rules** – The Supreme Court noted that the law demands "a causal or means-end connection between a legal violation and naturalization."
6. **State Dept. Releases Diversity Visa Lottery 2018 Results, Notifies Winners** – Those selected will need to act on their immigrant visa applications quickly, the bulletin warns.
7. **ABIL Global: Germany** – Effective August 1, 2017, the German parliament is implementing an EU directive on intra-company transfers.
8. **Firm In The News...**

Details:

1. **Supreme Court Partially Lifts Trump Travel Ban Preliminary**

Injunctions

On June 26, 2017, the Supreme Court partially lifted preliminary injunctions that barred the Department of State from enforcing section 2 of Executive Order 13780, which suspended for 90 days the entry into the United States of, and the issuance of visas to, nationals of six designated countries—Iran, Libya, Somalia, Sudan, Syria, and Yemen—and from enforcing section 6, which suspends refugee admissions from all countries for 120 days. The Supreme Court plans to hear arguments in the related cases in October brought against the Trump administration in the U.S. Courts of Appeals for the Ninth and Fourth Circuits.

The Department stated in a briefing that the travel ban for refugees will start July 6. Refugees scheduled to arrive before then are exempt from the temporary ban. The Department sent a cable to all diplomatic and consular posts implementing Executive Order 13780, in light of the Supreme Court's ruling on President Trump's travel ban, as of 8 p.m. ET on June 29, 2017. The cable notes that the Supreme Court's ruling allows the travel ban to be enforced only against foreign nationals who lack a "bona fide relationship with a person or entity in the United States." The cable states that applicants who are nationals of the affected countries who are determined to be otherwise eligible for visas and to have a credible claim of a bona fide relationship with a person or entity in the United States are exempt from the suspension of entry in the United States under section 2(c) of the order. Applicants who are nationals of the affected countries and who are determined to be otherwise eligible for visas, but who are determined not to have a qualifying relationship, "must be eligible for an exemption or waiver as described in section 3 of the in order to be issued a visa," the cable states.

The cable notes that any such relationship with a “person” must be a close familial relationship," as defined in the cable. Any relationship with an entity "must be formal, documented, and formed in the ordinary course, rather than for the purpose of evading the E.O." "Close family" is defined as a parent (including parent-in-law), spouse, child, adult son or daughter, son-in-law, daughter-in-law, sibling, whether whole or half. This includes step relationships. "Close family" does not include grandparents, grandchildren, aunts, uncles, nieces, nephews, cousins, brothers-in-law and sisters-in-law, and any other "extended" family members, the cable states.

The cable notes the following examples of who may and may not be included in

the exemption from the travel ban:

> n eligible I visa applicant employed by foreign media that has a news office based in the United States would be covered by this exemption . Students from designated countries who have been admitted to U.S. educational institutions have a required relationship with an entity in the United States. Similarly, a worker who accepted an offer of employment from a company in the United States or a lecturer invited to address an audience in the United States would be exempt. In contrast, the exemption would not apply to an applicant who enters into a relationship simply to avoid the E.O.: for example, a nonprofit group devoted to immigration issues may not contact foreign nationals from the designated countries, add them to client lists, and then secure their entry by claiming injury from their inclusion in the E.O. Also, a hotel reservation, whether or not paid, would not constitute a bona fide relationship with an entity in the United States.

The cable states that the travel ban does not apply to certain categories of individuals, such as those who were inside the United States as of June 29, 2017, who have a valid visa as of June 29, 2017, or who had a valid visa at 8 p.m. ET January 29, 2017, even after their visas expire or they leave the United States. The cable also notes:

> No visas will be revoked based on the E.O. , even if issued during the period in which Section 2(c) was enjoined by court order or during the 72-hour implementation period. New applicants will be reviewed on a case-by-case basis, with consular officers taking into account the scope and exemption provisions in the E.O. and the applicant's qualification for a discretionary waiver. Direction and guidance to resume normal processing of visas following the 90-day suspension will be sent .

In a related statement issued publicly on June 29, 2017, the Department noted:

> The Supreme Court's order specified that the suspension of entry in section 2(c) of Executive Order 13780 may not be enforced against foreign nationals who have a credible claim of a bona fide relationship with a person or entity in the United States. Applicants seeking B, C-1, C-3, D, or I visas will need to demonstrate that they have the required bona fide relationship in order to be exempt, or they may qualify for a waiver pursuant to the terms of the E.O. Qualified applicants in other nonimmigrant visa categories are considered exempt from the E.O., as a

> bona fide relationship to a person or entity in the United States is inherent in the requirements for the visa classification, unless the relationship was established for the purpose of evading the order.

The statement says that an individual who wishes to apply for an immigrant visa "should apply for a visa and disclose during the visa interview any information that might demonstrate that he or she is exempt from section 2(c) of the Executive Order." A consular officer "will carefully review each case to determine whether the applicant is affected by the E.O. and, if so, whether the case qualifies for a waiver," the statement says.

The statement also includes the following information with respect to students and short-term employees:

> I'm a student or short-term employee that was temporarily outside of the United States when the Executive Order went into effect. Can I return to school/work?
>
> If you have a valid, unexpired visa, the Executive Order does not apply to your return travel.
>
> If you do not have a valid, unexpired visa, the Supreme Court's decision specified that section 2(c) of the Executive Order may not be enforced against foreign nationals who have a credible claim of a bona fide relationship with a person or entity in the United States. One example cited in the Supreme Court's decision was a student from a designated country who had been admitted to U.S. university, thereby demonstrating a credible claim of a bona fide relationship with an entity in the United States.

The Supreme Court's decision is at https://www.supremecourt.gov/opinions/16pdf/16-1436_l6hc.pdf. The Department of State's public statement is at https://travel.state.gov/content/travel/en/news/important-announcement.html. A related "background briefing" is at https://www.state.gov/r/pa/prs/ps/2017/06/272281.htm. The full text of the cable is at http://live.reuters.com/Event/Live_US_Politics/989297085. The Executive Order is at https://www.whitehouse.gov/the-press-office/2017/03/06/executive-order-protecting-nation-foreign-terrorist-entry-united-states. A Department of Homeland

Security FAQ is at https://www.dhs.gov/news/2017/06/29/frequently-asked-questions-protecting-nation-foreign-terrorist-entry-united-states. An advisory by NAFSA: Association of International Educators is at https://www.nafsa.org/Content.aspx?id=57494.

Back to Top

2. **USCIS Resumes Premium Processing for H-1B Petitions Filed for Conrad 30 Medical Doctors, Interested Government Agencies**

U.S. Citizenship and Immigration Services (USCIS) has resumed premium processing for H-1B petitions filed for medical doctors under the Conrad 30 Waiver program, as well as interested government agency waivers. The Conrad 30 program allows certain medical doctors to stay in the United States on temporary visas after completing their medical training to work in rural and urban areas that have a shortage of physicians.

Eligible petitioners for medical doctors seeking H-1B status under the Conrad 30 program, or through an interested government agency waiver, can file Form I-907, Request for Premium Processing Service, for Form I-129, Petition for a Nonimmigrant Worker. Form I-907 can be filed together with an H-1B petition or separately for a pending H-1B petition, USCIS noted.

USCIS said it plans to resume premium processing of other H-1B petitions as workloads permit. "We will make additional announcements with specific details related to when we will begin accepting premium processing for those petitions," the agency said. Until then, premium processing remains temporarily suspended for all other H-1B petitions. USCIS said it will reject any Form I-907 filed for those petitions, and if the petitioner submitted one check combining the Form I-907 and Form I□129 fees, USCIS will reject both forms.

The USCIS notice is at https://www.uscis.gov/news/news-releases/uscis-resume-h-1b-premium-processing-physicians-under-conrad-30-waiver-program. Information on the Conrad 30 program is at https://www.uscis.gov/working-united-states/students-and-exchange-visitors/conrad-30-waiver-program. Information on interested government agency waivers is at https://travel.state.gov/content/visas/en/study-exchange/student/residency-waiver/request-by-federal-government-agency.html.

Back to Top

3. **International Entrepreneur Final Rule Expected To Be Delayed, Scrapped**

A final rule on international entrepreneurs, issued by the Obama administration on January 17, 2017, and scheduled to take effect July 17, 2017, was recently returned to the Office of Management and Budget for further review. According to new reports, the Trump administration has decided to delay the rule's effective date until March 2018, and ultimately to rescind it.

The final rule, intended to encourage entrepreneurs wishing to build companies in the United States, would have added new regulatory provisions guiding the use of parole on a case-by- case basis with respect to entrepreneurs of start-up entities who can demonstrate through evidence of "substantial and demonstrated potential for rapid business growth and job creation" that they would provide a "significant public benefit" to the United States. Such potential would be indicated by, among other things, "the receipt of significant capital investment from U.S. investors with established records of successful investments, or obtaining significant awards or grants from certain Federal, State or local government entities." If granted, parole would provide a temporary initial stay of up to 30 months (which may be extended by up to an additional 30 months) "to facilitate the applicant's ability to oversee and grow his or her start-up entity in the United States."

A group of investors and startup founders in 25 states recently sent a letter to President Trump encouraging him to allow the rule to move forward. Noting that immigrant entrepreneurs are a "critical driver of increased economic activity" in the United States, the letter states that the international entrepreneur rule would be a "job creation tool" and is "desperately needed at a time when U.S. entrepreneurial leadership is being challenged by other countries." Among other efforts, French President Emmanuel Macron recently announced a new technology visa for start-up founders, employees, and investors. "I want France to attract new entrepreneurs, new researchers, and be the nation for innovation and start-ups," he said. And the United States' next-door neighbor, Canada, offers an entrepreneur start-up visa program that grants permanent residence to immigrant entrepreneurs.

Bobby Franklin, president and chief executive of the National Venture Capital

Association (NVCA), noted the contributions of immigrant entrepreneurship to the U.S. economy. He said that NVCA's research has found that a third of U.S. venture-backed companies that went public between 2006 and 2012 had at least one immigrant founder. He noted a recent study showing that immigrants started more than half of U.S. "unicorns," or privately held companies valued at more than $1 billion.

Mr. Franklin's remarks are at https://techcrunch.com/2017/06/19/ensuring-foreign-born-founders-can-grow-their-startups-in-the-u-s/, The letter from the group of investors and startup founders discussed above is at http://nvca.org/wp-content/uploads/2017/06/Letter-to-President-Trump-on-IER-from-emerging-ecosystems.pdf. The original final rule is at https://www.gpo.gov/fdsys/pkg/FR-2017-01-17/pdf/2017-00481.pdf. A related article about the latest developments is at http://www.sfchronicle.com/business/article/Trump-administration-has-plan-to-scrap-startup-11236692.php.

Back to Top

4. **USCIS Redesigns Green Card Application**

U.S. Citizenship and Immigration Services (USCIS) has revised the Application to Register Permanent Residence or Adjust Status (Form I-485). The new Form I-485 and instructions "have been substantially updated to reduce complexity after collecting comments from the public and stakeholders," USCIS said.

USCIS said that starting on June 26, 2017, there will be a 60-day "grace period" during which the agency will accept both the 01/17/17 and 06/26/17 editions of Form I-485 and Supplements A and J (which have also been revised). Beginning August 25, 2017, USCIS will only accept the revised form and supplements.

Changes to the form include:

- Adjustments to navigation and the organization of questions, along with new spacing, columns, flow, white space, and formatting intended to enhance readability.
- Inclusion of questions about biographic information (Form G-325A) so applicants will no longer need to file a separate form;
- A list of 27 immigrant categories, which allows applicants to identify the

specific immigrant category under which they are applying; and
- A comprehensive, updated list of admissibility-related questions. Questions were added to ensure USCIS officers have the necessary information to better assess an applicant's admissibility and eligibility.

USCIS noted that although both the revised Form I-485 and its instructions may look different from earlier versions, the process for filing the form and supplements A and J remains the same. Applicants must still submit their paper applications to the location listed in the form instructions.

The announcement is at https://www.uscis.gov/news/news-releases/uscis-introduces-redesigned-form-green-card-applicants. The revised form is at https://www.uscis.gov/i-485.

Back to Top

5. **Minor Lies Can't Be Used to Revoke Citizenship, Supreme Court Rules**

On June 22, 2017, the U.S. Supreme Court ruled on the issue of when a lie during the naturalization process may lead to loss of U.S. citizenship. Divna Maslenjak, an ethnic Serb, lied during her naturalization process about her husband's service as an officer in the Bosnian Serb Army. When this was discovered, the government charged her with knowingly procuring her naturalization contrary to law because she knowingly made a false statement under oath in a naturalization proceeding. A district court said that to secure a conviction, the government need not prove that her false statements were material to, or influenced, the decision to approve her citizenship application.

The U.S. Court of Appeals for the Sixth Circuit had affirmed the conviction, but the Supreme Court noted that the law demands "a causal or means-end connection between a legal violation and naturalization." The Supreme Court said that to decide whether a defendant acquired citizenship by means of a lie, "a jury must evaluate how knowledge of the real facts would have affected a reasonable government official properly applying naturalization law." The Supreme Court therefore said that the jury instructions in this case were in error, vacated the judgment of the Court of Appeals, and remanded the case for further proceedings.

The Supreme Court's opinion is at https://www.supremecourt.gov/opinions/16pdf/16-309_h31i.pdf.

Back to Top

6. **State Dept. Releases Diversity Visa Lottery 2018 Results, Notifies Winners**

In the July 2017 Visa Bulletin, the Department of State released the diversity visa (DV) fiscal year 2018 results. The Kentucky Consular Center has registered and notified the winners of the DV-2018 diversity lottery. Those selected will need to act on their immigrant visa applications quickly, the bulletin warns.

The DV lottery makes available 50,000 permanent resident visas annually to persons from countries with low rates of immigration to the United States. Approximately 115,968 applicants have been registered and notified and may now make an application for an immigrant visa. The bulletin says that since it is likely that some of the first 50,000 persons registered will not pursue their cases to visa issuance, the larger figure is intended to ensure that all DV-2018 numbers will be used during FY 2018 (October 1, 2017, through September 30, 2018).

Applicants registered for the DV-2018 program were selected at random from 14,692,258 qualified entries (23,088,613 with derivatives) received during the 34-day application period that ran from Wednesday, October 4, 2016, until Monday, November 7, 2016. The visas have been apportioned among six geographic regions with a maximum of seven percent available to persons born in any single country. During the visa interview, the bulletin notes, principal applicants must provide proof of a high school education or its equivalent, or show two years of work experience in an occupation that requires at least two years of training or experience within the past five years.

Registrants living legally in the United States who wish to apply for adjustment of their status must contact U.S. Citizenship and Immigration Services for information on the requirements and procedures. Once the visa numbers have been used, the program for FY 2018 will end. Selected applicants who do not receive visas by September 30, 2018 will derive no further benefit from their DV-2018 registration. Similarly, spouses and children accompanying or following to join DV-2018 principal applicants are only entitled to derivative diversity visa status until September 30, 2018.

The bulletin notes that dates for the DV-2019 program registration period will be publicized in the coming months.

The July Visa Bulletin, which includes a statistical country-by-country breakdown of those registered for the DV-2018 program, is at https://travel.state.gov/content/visas/en/law-and-policy/bulletin/2017/visa-bulletin-for-july-2017.html.

Back to Top

7. **ABIL Global: Germany**

Effective August 1, 2017, the German parliament is implementing European Union (EU) Directive 2014/66/EC (Intra-Company Transfer (ICT)).

With the ICT Scheme, the EU Directive aims at providing a common framework for all participating member states (the United Kingdom, Ireland, and Denmark opted out) covering the GATS Mode 4 commitments on Intra-Group Transfers.

Overview: To be subject to this ICT scheme, third-country nationals must obtain a so-called ICT permit issued by the participating EU country where they will spend most of their time. The ICT permit is the first EU immigration permit that allows employment not just in the issuing member state but in a second member state for a period of up to 90 days (short-term mobility). To exercise the right to short-term mobility, the holder of an ICT permit issued by another member state must notify the Bundesamt für Migration und Flüchtlinge (BAMF) of the intended employment by providing information on the salary and work conditions. Unless the German administration actively refuses approval of the intended travel within 20 days, the third-country national is legally allowed to engage in short-term mobility under the conditions notified. Holders of an ICT permit issued by a fellow member state may also relocate for a period of more than 90 days to Germany by applying for a Mobile ICT card at the German immigration authorities before the transfer. If such an application is submitted 20 days before the start of the transfer and the ICT permit of the other EU member state is still valid, staying in Germany and working at the German entity is permitted for 90 days until the immigration authority's decision has been made.

Eligibility: The ICT Card can be issued to third-country nationals dispatched from their employer abroad to work as a CEO/CFO/comparable manager, specialist, or trainee at a group company in Germany. Its validity is limited to a maximum of three years for CEO/CFO/comparable manager or specialist, and one year for trainees. The group relationship requires a group of companies

that functions as a single economic entity through a common source of control, either by direct or indirect 51 percent ownership or domination agreements creating a structure of parent and subsidiary/affiliated companies. Managers are defined as persons directing the host entity or one of its departments with the power to "hire and fire" and who have sole responsibility for a substantial budget and report directly to directors or shareholders. A specialist needs to prove essential and specific knowledge in the area of business and/or the group company or host entity procedures, and a high level of qualification and relevant experience. Before a transfer to Germany, the applicant in the CEO/CFO/manager/specialist category must be employed with an entity of the same company or group for at least six months. A trainee is qualified by a university degree to undergo a paid traineeship during which, as part of the professional development, training in business techniques and methods is received.

Application process: The third-country national aiming for a German ICT Card must file a visa application with the German mission abroad at the place of residence. Visa waiver schemes that exist for other immigration categories and apply to certain nationalities may not be used when applying for the ICT Card. The ICT Card is subject to an internal approval procedure, which includes the German labor authority's verifying that salary and employment conditions will be comparable to those of German employees.

Note that when dealing with the ICT scheme, the implementations of the framework differ within the different EU member states.

Back to Top

8. **Firm In The News**

At the AILA Annual Conference 2017 in New Orleans, LA, June 21-24, 2017, **Cyrus D. Mehta**, **Cora-Ann V. Pestaina**, and **David Isaacson** were featured speakers.

Cyrus D. Mehta was Discussion Leader on a panel entitled *Avoiding Family Feuds: Ethics in Family Practice*, June 22, 2017.

Cyrus D. Mehta published Supreme Court May Have Bolstered Rights of Foreign Nationals with Ties to the United States on June 27, 2017.

Cora-Ann V. Pestaina was a speaker on a panel entitled *Tricky LCA and PERM*

Issues for a Mobile Workforce, June 22, 2017.

David Isaacson was a speaker on a panel entitled *Honestly, the United States is my Home*, June 22, 2017.

David Isaacson published Sessions v Morales-Santana: The Problems of Levelling Down on June 21, 2017; and Travel Ban FAQs – Updated 06/27/2017 on June 27, 2017.

Michelle Velasco published With Adopted Decision *Matter of O-A-*, USCIS Accepts Provisional Certificates As Evidence of Degree Completion on July 5, 2017.

Back to Top