



AUGUST 2017 IMMIGRATION UPDATE

Posted on August 1, 2017 by Cyrus Mehta

Headlines:

1. [**Sens. Graham, Durbin Introduce Bipartisan 'Dream Act'**](#) – On July 20, 2017, Sens. Lindsey Graham (R-SC) and Dick Durbin (D-IL) introduced the "Dream Act," a bipartisan legislative effort that would allow immigrant students who grew up in the United States to earn lawful permanent residence.
2. [**DHS Increases FY 2017 Limit on H-2B Temporary Nonagricultural Workers**](#) – The Departments of Homeland Security and Labor issued a "temporary rule" on July 19, 2017, to increase the limit of 66,000 H-2B nonimmigrant visas by authorizing the issuance of up to an additional 15,000 visas through the end of fiscal year 2017.
3. [**Supreme Court Allows Temporary Exemption for Grandparents, Others From Travel Ban, But Not for Certain Refugees**](#) – On July 19, 2017, the U.S. Supreme Court allowed a temporary exemption of grandparents and certain other relatives of those in the United States from President Donald Trump's travel ban to stand, but continued the temporary travel ban for certain refugees.
4. [**USCIS To Resume H-1B Premium Processing for Certain Cap-Exempt Petitions**](#) – USCIS has resumed premium processing for certain cap-exempt H-1B petitions as of July 24, 2017.
5. [**USCIS Announces Return of All Unselected FY 2018 H-1B Cap-Subject Petitions**](#) – Those who submitted an H-1B cap-subject petition between April 3 and April 7, 2017, but have not received a receipt notice or a returned petition by July 31 may contact USCIS for assistance.
6. [**USCIS Revises I-9 Employment Eligibility Verification Form**](#) – Employers can use the revised version or continue using Form I-9 with a revision date of 11/14/16N through September 17, 2017. On September 18, employers

must use the revised form with a revision date of 07/17/17N.

7. **[ABIL Global: Peru](#)** – A new law establishes a series of changes to the law on migration with respect to citizen security; standards for the internal and external immigration policy of Peru, including some aspects of the National Superintendence of Immigration; and the regulation of border security, among other important aspects. The ultimate aim of the new law is to simplify and order the immigration law protecting the fundamental rights of national and foreign citizens, and strengthen national security.

8. **Firm In The News...**

Details:

1. **Sens. Graham, Durbin Introduce Bipartisan 'Dream Act'**

On July 20, 2017, Sens. Lindsey Graham (R-SC) and Dick Durbin (D-IL) introduced the "Dream Act," a bipartisan legislative effort that would allow immigrant students who grew up in the United States to earn lawful permanent residence. As of press time, co-sponsors also included Sen. Jeff Flake (R-AZ) and Sen. Charles Schumer (D-NY).

"These young people have lived in America since they were children and built their lives here," said Sen. Graham. "There is support across the country for allowing Dreamers—who have records of achievement—to stay, work, and reach their full potential. ... this may be an area where both parties can come together."

Sen. Durbin said, "I'll do everything in my power as a United States Senator to protect these Dreamers and give them the chance to become American citizens so they can contribute to a brighter future for all Americans. I first introduced the Dream Act 16 years ago and I'll continue fighting until it becomes the law of the land. I thank Senator Graham for partnering with me in this bipartisan effort."

The Dream Act would allow eligible young people to earn lawful permanent residence, and eventually U.S. citizenship, if they:

- Are longtime residents who came to the United States as children;
- Graduate from high school or obtain a GED;
- Pursue higher education, work lawfully for at least three years, or serve in the military;

- Pass security and law enforcement background checks and pay a reasonable application fee;
- Demonstrate proficiency in the English language and a knowledge of United States history; and
- Have not committed a felony or other serious crimes and do not pose a threat to the United States.

The text of the bill, S. 1615, is at

<https://www.congress.gov/bill/115th-congress/senate-bill/1615/cosponsors?q=%7B%22search%22%3A%5B%22congressId%3A115+AND+billStatus%3A%5C%22Introduced%5C%22%22%5D%7D&r=43&overview=closed>. A related joint

statement from Sens. Graham and Durbin is at

<https://www.lgraham.senate.gov/public/index.cfm/press-releases?ID=EFDA943E-0686-45FB-A1DC-8621EC6716CE>. A one-page summary is at

<https://www.durbin.senate.gov/imo/media/doc/The%20Dream%20Act%20onepager%20final.pdf>. A section-by-section summary is at

<https://www.durbin.senate.gov/imo/media/doc/Dream%20Act%20of%202017%20section%20by%20section.pdf>.

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2. DHS Increases FY 2017 Limit on H-2B Temporary Nonagricultural Workers

The Departments of Homeland Security and Labor issued a "temporary rule" on July 19, 2017, to increase the limit of 66,000 H-2B nonimmigrant visas by authorizing the issuance of up to an additional 15,000 visas through the end of fiscal year 2017. The Departments said this is a one-time increase "based on a time-limited statutory authority" and does not affect the H-2B program in future fiscal years. They plan to promulgate regulations to implement this determination. The rule is effective July 19, 2017, through September 30, 2017.

The Departments explained that because of the intense competition for H-2B visas in recent years, the semi-annual visa allocation, and the regulatory requirement that employers apply for labor certification 75 to 90 days before the start date of work, employers who wish to obtain visas for their workers under the semi-annual allotment must act early to receive a temporary labor certification (TLC) and file a petition with USCIS. As a result, the Departments noted, the Department of Labor typically sees a significant spike in TLC

applications for H-2B visas for temporary or seasonal jobs during the U.S.'s warm weather months. For example, in FY 2017, of the TLC applications filed in January, the Office of Foreign Labor Certification (OFLC) certified 54,827 worker positions for start dates of work on April 1, in excess of the entire semi-annual visa allocation. U.S. Citizenship and Immigration Services received sufficient H-2B petitions to meet the second half of the fiscal year regular cap on March 13, 2017. This was the earliest date that the cap was reached in a respective fiscal year since FY 2009 and reflects an ongoing trend of high program demand, the Departments explained.

Following consultation with the Secretary of Labor, the Secretary of Homeland Security determined that the needs of some U.S. businesses could not be satisfied in FY 2017 with U.S. workers who are willing, qualified, and able to perform temporary nonagricultural labor. The Secretary of Homeland Security determined that it was appropriate to raise the numerical limitation on H-2B nonimmigrant visas by up to an additional 15,000 for the remainder of the fiscal year, which ends September 30. Consistent with such authority, the Secretary of Homeland Security decided to increase the H-2B cap for FY 2017 by up to 15,000 additional visas for those U.S. businesses that attest to a level of need such that, if they do not receive all of the workers under the cap increase, they are likely to suffer irreparable harm; i.e., a permanent and severe financial loss. These businesses must attest that they will likely suffer irreparable harm and must retain documentation supporting this attestation, the Departments note.

The Secretary of Homeland Security's determination to increase the numerical limitation was based on the conclusion that "some businesses face closing their doors in the absence of a cap increase." The Departments noted that some stakeholders reported that access to additional H-2B visas is essential to the continued viability of some small businesses that play an important role in sustaining the economy in their states, while others stated that an increase is unnecessary and raises the possibility of abuse. The Secretary of Homeland Security has deemed it "appropriate, notwithstanding such risk of abuse, to take immediate action to avoid irreparable harm to businesses; such harm would in turn result in wage and job losses by their U.S. workers, and other adverse downstream economic effects."

The rule, which was published at 82 Fed. Reg. 32987 (July 19, 2017), is at <https://www.gpo.gov/fdsys/pkg/FR-2017-07-19/html/2017-15208.htm>. Details

on eligibility and filing requirements are also available at <https://www.uscis.gov/working-united-states/temporary-workers/one-time-increase-h-2b-nonimmigrant-visas-fy-2017>. The page includes an email address for reporting fraud and abuse at ReportH2Babuse@uscis.dhs.gov.

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3. Supreme Court Allows Temporary Exemption for Grandparents, Others From Travel Ban, But Not for Certain Refugees

On July 19, 2017, the U.S. Supreme Court allowed a temporary exemption of grandparents and other relatives (grandchildren, aunts, uncles, nieces, nephews, cousins, brothers-in-law, and sisters-in-law) of those in the United States from President Donald Trump's temporary travel ban to stand. However, the court continued the temporary travel ban for certain refugees, at least until the U.S. Court of Appeals for the Ninth Circuit can review the related appeal. The people affected are from Iran, Syria, Sudan, Libya, Yemen, and Somalia. Also exempt from the travel ban, per a Trump administration list, are parents, spouses, fiancé(e)s, sons, daughters, sons-in-law, daughters-in-law, and siblings.

The Supreme Court also denied the Trump administration's motion to clarify its order of June 26, 2017. The Supreme Court's brief order is at https://www.supremecourt.gov/orders/courtorders/071917zr_o7jp.pdf.

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4. USCIS To Resume H-1B Premium Processing for Certain Cap-Exempt Petitions

U.S. Citizenship and Immigration Services (USCIS) has resumed premium processing for certain cap-exempt H-1B petitions as of July 24, 2017.

USCIS explained that the H-1B visa has an annual cap of 65,000 visas each fiscal year. Additionally, there is an annual "master's cap" of 20,000 petitions filed for beneficiaries with a U.S. master's degree or higher. Premium processing will resume for petitions that may be exempt from the cap if the H-1B petitioner is:

- An institution of higher education;
- A nonprofit related to or affiliated with an institution of higher education;
- or

- A nonprofit research or governmental research organization.

Premium processing will also resume for petitions that may also be exempt if the beneficiary will be employed at a qualifying cap-exempt institution, organization, or entity.

Cap-exempt petitioners who are eligible for premium processing can file Form I-907, Request for Premium Processing Service, for Form I-129, Petition for a Nonimmigrant Worker. The I-907 can be filed together with an H-1B petition or separately for a pending H-1B petition.

USCIS previously announced that premium processing resumed on June 26, 2017, for H-1B petitions filed on behalf of physicians under the Conrad 30 waiver program as well as interested government agency waivers.

USCIS said it plans to resume premium processing for other H-1B petitions "as workloads permit." USCIS plans to make additional announcements with specific details related to when the agency will begin accepting premium processing for those petitions. Until then, premium processing remains temporarily suspended for all other H-1B petitions. USCIS will reject any Form I-907s 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 announcement is at

<https://www.uscis.gov/news/uscis-resume-h-1b-premium-processing-certain-cap-exempt-petitions>.

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5. USCIS Announces Return of All Unselected FY 2018 H-1B Cap-Subject Petitions

U.S. Citizenship and Immigration Services (USCIS) announced on July 19, 2017, that it has returned all fiscal year 2018 H-1B cap-subject petitions that were not selected by the agency's computer-generated random selection process. USCIS previously announced that it had completed data entry for all selected cap-subject petitions.

USCIS said that those who submitted an H-1B cap-subject petition between April 3 and April 7, 2017, but have not received a receipt notice or a returned petition by July 31 may contact USCIS for assistance. Contact information is at <https://www.uscis.gov/about-us/contact-us>. The announcement is at

<https://www.uscis.gov/news/alerts/uscis-returns-unselected-fiscal-year-2018-h-1b-cap-subject-petitions>.

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6. USCIS Revises I-9 Employment Eligibility Verification Form

On July 17, 2017, U.S. Citizenship and Immigration Services (USCIS) released a revised version of Form I-9, Employment Eligibility Verification. USCIS said employers can use this revised version or continue using Form I-9 with a revision date of 11/14/16N through September 17, 2017. On September 18, employers must use the revised form with a revision date of 07/17/17N. The revised form includes the changes summarized below.

Revisions to the Form I-9 instructions:

- The name of the Office of Special Counsel for Immigration-Related Unfair Employment Practices has been changed to its new name, Immigrant and Employee Rights Section.
- “the end of” has been removed from the phrase “the first day of employment.”

Revisions related to the List of Acceptable Documents on Form I-9:

- The Consular Report of Birth Abroad (Form FS-240) has been added to List C. Employers completing the I-9 on a computer can select Form FS-240 from the dropdown menus in List C of Sections 2 and 3. E-Verify users can also select Form FS-240 when creating a case for an employee who has presented this document for Form I-9 purposes.
- All the certifications of report of birth issued by the Department of State (Form FS-545, Form DS-1350, and Form FS-240) have been combined into selection C #2 in List C.
- All List C documents except the Social Security card have been renumbered. For example, the employment authorization document issued by the Department of Homeland Security on List C changed from List C #8 to List C #7.

The notice is at

<https://www.uscis.gov/news/alerts/revised-form-i-9-now-available>. USCIS said it has also included these changes in the I-9 handbook for employers, at <https://www.uscis.gov/i-9-central/handbook-employers-m-274>. The revised

form, in English and Spanish, is at <https://www.uscis.gov/i-9>.

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7. ABIL Global: Peru

On January 7, 2017, legislative decree N° 1350, the "New Law of MIGRACIONES," was published in the Official Gazette *El Peruano* under the powers delegated by the Peruvian Congress by virtue of Law No. 30506. The new law establishes a series of changes to the law on migration with respect to citizen security, standards for the internal and external immigration policy of Peru, including some aspects of the National Superintendence of Immigration (MIGRACIONES), and the regulation of border security, among other important aspects. The ultimate aim of the new law is to simplify and revise the immigration law protecting the fundamental rights of national and foreign citizens, and to strengthen national security.

Legislative Decree N° 1350, in force since March 1, 2017, means considerable progress because it changes the scheme considerably with respect to immigration categories and statuses, and creates several new immigration statuses, among other things. New regulations were published in *El Peruano* on March 27, 2017, with Supreme Decree No. 007-2017-IN.

With the entry into force of the new law, the former Aliens Law N° 703 and its amendment, Legislative Decree N° 1043, were repealed along with Legislative Decree No. 1236 and any rule that violates Legislative Decree No. 1350.

The law includes two important changes:

1. With respect to temporary migratory status for business, the new law allows foreigners who do not intend to live in Peru to perform business, legal, contractual, and specialized technical assistance or similar activities in Peruvian territory. The status is granted for 183 days, consecutive or cumulative, over a period of 1 year counted from the first entry into Peru. This status is not renewable for temporary migration for business.
2. "Appointed worker" status is now granted not only on a temporary basis, but also as a resident status.

Thus, foreign individuals coming to work in Peru to carry out labor activities in the national territory, which consist of the accomplishment of a specific task or function or a job that requires specialized professional, commercial, or

technical knowledge and who are sent by a foreign employer, as well as those who are commissioned by a highly specialized international corporation for the repair or maintenance of machinery or technically complex or advanced systems or mechanisms, or for corporate audits and international certifications, may receive a temporary visa with an authorized stay of 183 days, consecutive or cumulative, over a period of one year counted from the first entry into Peruvian territory, extendable up to a total of one year, maximum. In sum, for temporary appointed worker migratory status, the initial authorized period of stay is 183 days (consecutive or cumulative), which can be extended in a subsequent process up to one year. For resident appointed worker migratory status, the visa is granted for one year, renewable.

Both types of status allow multiple entries. Foreigners with resident appointed worker migratory status will hold a foreign card (*carné de extranjería*).

A foreigner with this migratory status cannot carry out paid or lucrative activities, either self-employed such as freelancing or independent contracting, or working as a subordinated employee, in Peru.

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8. Firm In The News

Cyrus D. Mehta was a Panelist on the topic *Ethical Issues in Removal Proceedings*, at Defending Immigration Removal Proceedings 2017, organized by Practising Law Institute, New York, July 20, 2017.

Cyrus D. Mehta published [Supreme Court's Heightened Standard For Revoking Naturalization Should Apply to All Immigration Benefits](#) on July 18, 2017; [Trump's H-2B Visa Conflict: How We Can Take Advantage Of It To Gain Broader Immigration Reform](#) on July 24, 2017; and [H-1B Entry Level Wage Blues](#) on July 31, 2017

David Isaacson published [Travel Ban: FAQs – Updated 07/19/2017](#) on July 19, 2017.

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