



# OCTOBER 2017 IMMIGRATION UPDATE

*Posted on October 2, 2017 by Cyrus Mehta*

## Headlines

1. [Trump Administration Implements New Travel Restrictions](#) – The Trump administration has announced travel and visa restrictions with respect to the countries of Chad, Iran, Libya, North Korea, Somalia, Syria, Venezuela, and Yemen, subject to "categorical exceptions and case-by-case waivers."
2. [Following Mysterious Attacks, United States Suspends Visas for Cubans, Withdraws Most Staff From Havana Embassy, Issues Cuba Travel Warning](#) – Following still-unexplained attacks on U.S. personnel of the embassy in Havana, Cuba, that left some with severe health problems, the United States has suspended visa issuance in Cuba for all Cubans and ordered the departure of more than half of its staff from the embassy, along with their family members. The Department of State has also issued a travel warning advising U.S. citizens not to travel to Cuba.
3. [Employers Must Use Form I-9 With New Revision Date, USCIS Says](#) – Employers must use Form I-9, Employment Eligibility Verification, with the new revision date of 07/17/17 N.
4. [Lawsuit Challenges Postponement of International Entrepreneur Rule](#) – A lawsuit has been filed challenging the postponement of the International Entrepreneur Rule (IER). The rule would have permitted foreign entrepreneurs to travel to or stay in the United States to grow new businesses. Less than a week before the IER was scheduled to take effect, the Department of Homeland Security announced that its implementation would be significantly delayed and suggested that it ultimately intends to rescind the IER.
5. [USCIS No Longer Accepting Petitions for One-Time Increase to H-2B Temporary Nonagricultural Visa Program Cap](#) – USCIS is no longer

accepting petitions from U.S. employers seeking to hire temporary nonagricultural workers under the one-time increase to the FY 2017 H-2B cap announced in July 2017.

6. [USCIS Extends TPS for South Sudan](#) – DHS has extended the designation of South Sudan for temporary protected status for 18 months, from November 3, 2017, through May 2, 2019.
7. [USCIS Announces Termination of TPS for Sudan in November 2018](#) – DHS has determined that conditions in Sudan no longer support its designation for temporary protected status. Benefits for beneficiaries of Sudan TPS will be extended for 12 months to allow for an orderly transition before the designation terminates on November 2, 2018.
8. [ABIL Global: Peru](#) – This article provides brief comments on the investor visa in Peru.
9. **Firm In The News...**

## Details:

### 1. Trump Administration Implements New Travel Restrictions

On September 24, 2017, President Donald Trump issued a presidential proclamation on "Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats." The proclamation announces the following measures with respect to the countries of Chad, Iran, Libya, North Korea, Somalia, Syria, Venezuela, and Yemen, subject to "categorical exceptions and case-by-case waivers":

- Chad: The proclamation suspends indefinitely the entry into the United States of nationals of Chad as immigrants, and as nonimmigrants on business (B-1), tourist (B-2), and business/tourist (B-1/B-2) visas.
- Iran: The proclamation suspends indefinitely the entry into the United States of nationals of Iran as immigrants and nonimmigrants, except that entry by such nationals under valid student (F and M) and exchange visitor (J) visas is not suspended, although such individuals "should be subject to enhanced screening and vetting requirements."
- Libya: The proclamation suspends indefinitely the entry into the United States of nationals of Libya as immigrants, and as nonimmigrants on business (B-1), tourist (B-2), and business/tourist (B-1/B-2) visas.
- North Korea: The proclamation suspends indefinitely the entry into the United States of nationals of North Korea as immigrants and

nonimmigrants.

- Somalia: The proclamation suspends indefinitely the entry into the United States of nationals of Somalia as immigrants. Additionally, visa adjudications for nationals of Somalia and decisions regarding their entry as nonimmigrants "should be subject to additional scrutiny to determine if applicants are connected to terrorist organizations or otherwise pose a threat to the national security or public safety of the United States."
- Syria: The proclamation suspends indefinitely the entry into the United States of nationals of Syria as immigrants and nonimmigrants.
- Venezuela: The proclamation suspends indefinitely the entry into the United States of officials of government agencies of Venezuela involved in screening and vetting procedures—including the Ministry of the Popular Power for Interior, Justice and Peace; the Administrative Service of Identification, Migration and Immigration; the Scientific, Penal and Criminal Investigation Service Corps; the Bolivarian National Intelligence Service; and the Ministry of the Popular Power for Foreign Relations—and their immediate family members as nonimmigrants on business (B-1), tourist (B-2), and business/tourist (B-1/B-2) visas. Nationals of Venezuela who are visa holders "should be subject to appropriate additional measures to ensure traveler information remains current."
- Yemen: The proclamation suspends indefinitely the entry into the United States of nationals of Yemen as immigrants, and as nonimmigrants on business (B-1), tourist (B-2), and business/tourist (B-1/B-2) visas.

The proclamation also notes that entry restrictions and limitations on Iraq are "not warranted." However, nationals of Iraq who seek to enter the United States will be subject to "additional scrutiny to determine if they pose risks to the national security or public safety of the United States."

Exceptions. Among other things, the proclamation lists exceptions to these suspensions of entry for:

- Any lawful permanent resident of the United States;
- Any foreign national who is admitted to or paroled into the United States on or after the applicable effective date (see the proclamation for details);
- Any foreign national who has a document other than a visa—such as a transportation letter, an appropriate boarding foil, or an advance parole document—valid on the applicable effective date or issued on any date

thereafter, that permits him or her to travel to the United States and seek entry or admission;

- Any dual national of a designated country when the individual is traveling on a passport issued by a non-designated country;
- Any foreign national traveling on a diplomatic or diplomatic-type visa; North Atlantic Treaty Organization visa; C-2 visa for travel to the United Nations; or G-1, G-2, G-3, or G-4 visa; and
- Any foreign national who has been granted asylum by the United States; any refugee who has already been admitted to the United States; or any individual who has been granted withholding of removal, advance parole, or protection under the Convention Against Torture.

The proclamation, which includes additional details and effective dates, is at <https://www.whitehouse.gov/the-press-office/2017/09/24/enhancing-vetting-capabilities-and-processes-detecting-attempted-entry>. A related alert from the Department of State, which includes a table summarizing the travel restrictions, is at

<https://travel.state.gov/content/travel/en/news/important-announcement.html>.

The separate announcement about the invalidity of U.S. passports for travel to North Korea is at

<https://travel.state.gov/content/travel/en/news/north-korea-travel-restriction.html>.

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## **2. Following Mysterious Attacks, United States Suspends Visas for Cubans, Withdraws Most Staff From Havana Embassy, Issues Cuba Travel Warning**

Following still-unexplained attacks on U.S. personnel of the embassy in Havana, Cuba, that left some with severe health problems, the United States has suspended visa issuance in Cuba for all Cubans and ordered the departure of more than half of its staff from the embassy, along with their family members. The Department of State has also issued a travel warning advising U.S. citizens not to travel to Cuba.

The Department explained that at least 21 U.S. embassy employees have been targeted in attacks of unknown origin, resulting in significant injuries, including ear complaints, hearing loss, dizziness, tinnitus, balance problems, visual

complaints, headache, fatigue, cognitive issues, and difficulty sleeping.

The Department said it is "looking at the possibility of being able to apply for visas at embassies or consulates outside of Cuba in other countries. But we haven't actually made definitive arrangements yet. We're continuing to look at that. But all of the kind of regular visas or ordinary visas would not be issued through Havana."

The travel warning notes that the attacks have occurred in U.S. diplomatic residences and hotels frequented by U.S. citizens. The travel warning also notes that due to the drawdown in staff, the U.S. embassy in Havana has limited ability to assist U.S. citizens. The embassy will provide only emergency services to U.S. citizens. The warning states that U.S. citizens in Cuba in need of emergency assistance should contact the embassy by telephone at +(53)(7) 839-4100 or the Department of State at 1-202-501-4444. U.S. citizens should not attempt to go to the U.S. embassy because it suffered severe flood damage during Hurricane Irma, the warning states.

A transcript of a related press briefing via teleconference on September 29, 2017, is at <https://www.state.gov/r/pa/prs/ps/2017/09/274518.htm>. The Cuba travel warning is at

<https://travel.state.gov/content/passports/en/alertswarnings/cuba-travel-warning.html>. The U.S. embassy in Havana's website is at <https://cu.usembassy.gov/>.

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### **3. Employers Must Use Form I-9 With New Revision Date, USCIS Says**

U.S. Citizenship and Immigration Services (USCIS) announced that beginning September 18, 2017, employers must use Form I-9, Employment Eligibility Verification, with the new revision date of 07/17/17 N, to verify the identity and work eligibility of every new employee hired after November 6, 1986, or for the reverification of expiring employment authorization of current employees (if applicable). This date is found on the lower left corner of the form. Prior versions of the form are no longer valid for use. Employers who fail to use the new form may be subject to penalties.

USCIS reminded employers to continue to follow existing storage and retention rules for each previously completed Form I-9. The storage and retention rules are at <https://www.uscis.gov/i-9-central/retain-and-store-form-i-9>. The USCIS announcement about the new revision date is at

<https://www.uscis.gov/news/alerts/employers-must-use-form-i-9-revision-date-071717-n>.

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#### **4. Lawsuit Challenges Postponement of International Entrepreneur Rule**

The American Immigration Council (AIC) has filed a lawsuit, *National Venture Capital Association, et al., v. Duke*, challenging the postponement of the International Entrepreneur Rule (IER). The rule, which was supposed to take effect July 17, 2017, would have permitted foreign entrepreneurs to travel to or stay in the United States to grow new businesses. Less than a week before the IER was scheduled to take effect, the Department of Homeland Security (DHS) announced that its implementation would be significantly delayed and suggested that it ultimately intends to rescind the IER.

In announcing the lawsuit, AIC said, "Immigrant entrepreneurs, who bring their talents, ideas, and initiative with them to the United States often face significant barriers to obtaining permission to travel and work in the United States. The IER was promulgated to address these problems and was informed by extensive input from affected entrepreneurs, the business community, and the American people."

Plaintiffs are prospective entrepreneur applicants under the IER or companies founded by potential applicants.

AIC, in cooperation with the Washington, DC, office of Mayer Brown LLP, filed the lawsuit against the Department of Homeland Security. Plaintiffs include the National Venture Capital Association (NVCA), which is the largest organization of venture capitalists in the United States; foreign entrepreneurs; and startup companies. The complaint alleges that the government failed to comply with the Administrative Procedure Act's notice-and-comment requirement. Plaintiffs seek to compel the defendants to implement the IER and to begin accepting and adjudicating parole applications from international entrepreneurs. NVCA noted that its 2013 study "determined that a full one-third of U.S. venture-backed companies that went public between 2006 and 2012 had at least one immigrant founder." NVCA also cited a 2016 finding by a National Foundation for American Policy study that "immigrants have started more than half (44 of 87) of America's startup companies valued at \$1 billion or more."

The AIC's announcement of the lawsuit is at

<https://www.americanimmigrationcouncil.org/litigation/lawsuit-challenges-postponement-international-entrepreneur-rule>. NVCA's statement about the

lawsuit is at

<https://nvca.org/pressreleases/nvca-entrepreneurs-startups-file-lawsuit-challenging-delay-international-entrepreneur-rule/>. The complaint is at

[https://www.americanimmigrationcouncil.org/sites/default/files/litigation\\_documents/lawsuit\\_challenges\\_postponement\\_of\\_the\\_international\\_entrepreneur\\_rule\\_complaint.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/litigation_documents/lawsuit_challenges_postponement_of_the_international_entrepreneur_rule_complaint.pdf).

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## **5. USCIS No Longer Accepting Petitions for One-Time Increase to H-2B Temporary Nonagricultural Visa Program Cap**

U.S. Citizenship and Immigration Services (USCIS) announced on September 19, 2017, that it is no longer accepting petitions from U.S. employers seeking to hire temporary nonagricultural workers under the one-time increase to the fiscal year (FY) 2017 H-2B cap announced in July 2017.

In May, Congress temporarily delegated its authority to the Secretary of Homeland Security to increase the number of temporary nonagricultural work visas available to U.S. employers through FY 2017. Then-Secretary of Homeland Security John Kelly determined that there were not enough qualified and willing U.S. workers available to perform temporary nonagricultural labor to satisfy the needs of some U.S. businesses in FY 2017. Consequently, additional H-2B visas were made available to U.S. businesses that could establish they would likely suffer irreparable harm if they could not hire all the H-2B workers requested in their FY 2017 petitions. Some employers were also required to conduct a fresh round of recruitment efforts for U.S. workers before being allowed to petition for additional foreign workers. An additional 15,000 visas were made available under a final rule published in July.

Following the filing deadline guidance included in July's final rule, USCIS has stopped accepting petitions and is rejecting any FY 2017 H-2B cap-subject petitions received after September 15, 2017. With the close of the petition period on September 15, USCIS announced that it has received a total request for 13,534 workers.

Petitions that have been submitted but are not approved by USCIS before

October 1, 2017, will be denied, and any associated fees will not be refunded, USCIS said.

USCIS will continue to accept FY 2017 H-2B petitions for workers who are exempt from the congressionally mandated cap.

The USCIS announcement is at

<https://www.uscis.gov/news/news-releases/uscis-no-longer-accepting-petitions-one-time-increase-temporary-nonagricultural-visa-program>. Additional

information about how the supplemental FY 2017 H-2B visas are being used, including information about the petitioning employers, is at

<https://www.uscis.gov/working-united-states/temporary-workers/one-time-increase-h-2b-nonimmigrant-visas-fy-2017>. The July final rule is at

<https://www.federalregister.gov/documents/2017/07/19/2017-15208/exercise-of-time-limited-authority-to-increase-the-fiscal-year-2017-numerical-limitation-for-the>.

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## **6. USCIS Extends TPS for South Sudan**

The Department of Homeland Security (DHS) has extended the designation of South Sudan for temporary protected status (TPS) for 18 months, from November 3, 2017, through May 2, 2019. A notice sets forth procedures necessary for nationals of South Sudan (or those having no nationality who last habitually resided in South Sudan) to re-register for TPS and to apply for employment authorization documents (EADs) with U.S. Citizenship and Immigration Services (USCIS). USCIS will issue new EADs with a May 2, 2019, expiration date to eligible South Sudan TPS beneficiaries who timely re-register and apply for EADs under this extension. If a South Sudan TPS beneficiary timely re-registers and properly files an application for an EAD during the 60-day re-registration period, his or her EAD will be automatically extended for an additional period of up to 180 days from the date the current EAD expires; i.e., through May 1, 2018.

The USCIS announcement is at

<https://www.uscis.gov/news/news-releases/temporary-protected-status-south-sudan-extended-18-months>. The related Federal Register notice is at

<https://www.gpo.gov/fdsys/pkg/FR-2017-09-21/html/2017-20174.htm>. USCIS said that more information will be posted soon on

<https://www.uscis.gov/humanitarian/temporary-protected-status>. Further details about the extension of TPS for South Sudan, including the application requirements and procedures, are at <https://www.gpo.gov/fdsys/pkg/FR-2017-09-21/html/2017-20174.htm>.

## **7. USCIS Announces Termination of TPS for Sudan in November 2018**

The Department of Homeland Security (DHS) has determined that conditions in Sudan no longer support its designation for temporary protected status (TPS). Benefits for beneficiaries of Sudan TPS will be extended for 12 months to allow for an orderly transition before the designation terminates on November 2, 2018.

Current beneficiaries of Sudan's TPS designation seeking to extend their TPS status must re-register within the re-registration period, which is expected to be published shortly in the Federal Register and on <http://www.uscis.gov/tps>. Those who re-register and request a new employment authorization document (EAD) may receive an automatic extension of their expiring EAD for up to 180 days from the date their current EAD expires. If a beneficiary's EAD request is approved, he or she will receive a new EAD with an expiration date of November 2, 2018. USCIS strongly encourages TPS beneficiaries to re-register and file their EAD applications as early as possible to avoid lapses in documentation of employment authorization.

Although TPS benefits for Sudan will no longer be in effect starting November 2, 2018, TPS beneficiaries will continue to hold any other immigration status that they have maintained or acquired while registered for TPS. DHS is urging individuals who do not have another immigration status "to use the time before the termination becomes effective in November to prepare for and arrange their departure from the United States or to apply for other immigration benefits for which they may be eligible."

The USCIS announcement is at <https://www.uscis.gov/news/news-releases/temporary-protected-status-sudan-terminate-november-2018>.

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## **8. ABIL Global: Peru**

*This article provides brief comments on the investor visa in Peru.*

On January 7, 2017, the New Law of MIGRACIONES, Legislative Decree No. 1350, was published in the Official Gazette, "El Peruano." The new law and regulations, approved by Supreme Decree No. 007-2017-IN, have been in force since March 1, 2017.

This new immigration legislation has instituted a series of changes and the creation of new migratory statuses. One of these changes concerns investors. The new law allows a foreigner to establish, develop, or manage one or more lawful investments in Peru.

The amount of the investment and other conditions are established by regulation. Eligibility requirements include:

A) An investment equal to or higher than 500,000.00 Peruvian Sol (PEN), equivalent to approximately US\$155,275. The investment amount can be modified by Superintendence Resolution.

B) Serving only as manager or director of a foreign person's own company, for which he or she must comply with the corresponding labor or tax rules. This position of the foreigner is not included in quotas for the local company's payroll, established in Legislative Decree No. 689 (Law of Hiring of Foreign Personnel) and its regulations. Under no circumstances may the foreign person support the investment through the transfer of shares.

MIGRACIONES is the authority that grants this migratory status. The Investor visa allows multiple entries. The foreign individual receives a resident permit (foreign card/*carné de extranjería*) for 365 days, renewable while the same conditions exist.

Procedurally, there are two alternative ways to obtain Investor status. First, an "obtainment visa process" implies that all the necessary documentation is submitted at MIGRACIONES offices in Peru; however, the applicant remains abroad initially. Once his or her visa is approved, he or she collects it from the Peruvian consulate previously chosen. Then he or she comes to Peru to finish the process. This procedure takes 30 working days from the time of initial filing. Alternatively, a "change of immigration status (in-country) process" implies that the foreign national enters Peru in tourist or business migratory status, then applies at MIGRACIONES for the Investor visa and submits the required documentation. This procedure takes 60 working days from the time of initial filing.

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### 9. **Firm In The News...**

**Cyrus Mehta** published [Dealing With The Dreaded RFE – Reflections Of An Immigration Lawyer](#) on September 25, 2017.

**Cyrus Mehta** was a Speaker, *Ethics in Immigration Representation*, organized by Immigrant Justice Corps Training, New York, NY, September 2017.

**Cyrus Mehta and Sophia Genovese** were Speakers at *DACA: What's Next? Learn, Act & Organize*, organized by Chhaya CDC in partnership with New York Immigration Coalition and Cyrus D. Mehta & Partners, PLLC, Jackson Heights, NY, September 20, 2017.