



## MID-OCTOBER 2017 IMMIGRATION UPDATE

*Posted on October 17, 2017 by Cyrus Mehta*

### Headlines:

1. [Kirstjen Nielsen Nominated as Secretary of Homeland Security](#) – On October 12, 2017, President Donald Trump announced the nomination of Kirstjen Nielsen for the position of Secretary of Homeland Security.
2. [Lee Cissna Confirmed as Director of USCIS](#) – The U.S. Senate confirmed Lee Francis Cissna as director of U.S. Citizenship and Immigration Services on October 5, 2017.
3. [Revised Form Allows Work Authorization and SSN Application Simultaneously](#) – Foreign nationals in certain categories can now apply for work authorization and a social security number using a single form, the updated Form I-765, Application for Employment Authorization.
4. [Premium Processing Now Available for All Petitioners Seeking H-1B Visas](#) – USCIS resumed premium processing on October 3, 2017, for all H-1B visa extension-of-stay petitions. Premium processing is now available for all types of H-1B petitions.
5. [USCIS Reminds About Immigration Services Available To Those Affected by Disasters](#) – USCIS released a reminder about immigration services that may help people affected by unforeseen circumstances, including disasters such as hurricanes. USCIS said the measures may be available on a case-by-case basis upon request.
6. [DOL Changes iCERT System for H-2A and H-2B Programs](#) – OFLC said new easy-to-understand steps and instructions "will serve to clarify regulatory filing requirements and improve the quality and consistency of H-2A and H-2B applications received for processing."
7. [State Dept. Releases Cable on Revised Guidance re 90-Day Rule](#) – The cable advises posts on revised guidance regarding the 90-day rule, formerly known as the "30/60 day rule."

8. [U.S. Suspends Certain Visa Services in Turkey](#) – The United States has suspended certain visa services in Turkey.
9. **Firm In The News...**

### **Details:**

#### **1. Kirstjen Nielsen Nominated as Secretary of Homeland Security**

On October 12, 2017, President Donald Trump announced the nomination of Kirstjen Nielsen for the position of Secretary of Homeland Security. Ms. Nielsen is currently the White House principal deputy chief of staff. She was John Kelly's deputy when he served as President Trump's first Secretary of Homeland Security, and came with Mr. Kelly to the White House when he became President Trump's chief of staff.

According to a White House statement, Ms. Nielsen has experience in the areas of homeland security policy and strategy, cybersecurity, critical infrastructure, and emergency management. She is the first nominee for this position to have previously worked within the Department of Homeland Security, having served there in two administrations, first as senior legislative policy director for Transportation and Security Administration under President George W. Bush and then as Department of Homeland Security Chief of Staff under President Trump. Before joining the Trump administration, Ms. Nielsen founded a risk and security management consulting firm. She previously served as Special Assistant to the President and senior director for prevention, preparedness, and response on the White House Homeland Security Council under President George W. Bush, in addition to serving as a corporate attorney and as a congressional staff member.

Elaine Duke has been serving as acting Secretary of Homeland Security since April 2017.

The White House statement is at

<https://www.whitehouse.gov/the-press-office/2017/10/11/president-donald-j-trump-nominates-kirstjen-nielsen-secretary-homeland>. Related remarks by the

President are at

<https://www.whitehouse.gov/the-press-office/2017/10/12/remarks-president-trump-announcing-nomination-kirstjen-nielsen-secretary>.

[Back to Top](#)

## 2. Lee Cissna Confirmed as Director of USCIS

The U.S. Senate confirmed Lee Francis Cissna as director of U.S. Citizenship and Immigration Services on October 5, 2017. The vote was 55-43 in favor of Mr. Cissna's confirmation.

Mr. Cissna most recently helped write the H-1B and L-1 Visa Reform Act of 2015, a bill that would have dramatically enlarged the enforcement authority of the U.S. Department of Labor and restricted H-1B and L-1 visa requirements and benefits. He also helped draft the American Job Creation and Investment Promotion Reform Act of 2015, which included an array of what have come to be known as EB-5 "integrity" measures.

Most recently, Mr. Cissna was Director of Immigration Policy in the Office of Policy of the U.S. Department of Homeland Security (DHS). Before serving in that position, Mr. Cissna served in USCIS' Office of the Chief Counsel. Before that, he was an attorney in private practice in the immigration group of the law firm of Kaufman & Canoles in Richmond, Virginia. Mr. Cissna also served in the U.S. Department of State as a U.S. Foreign Service Officer stationed in Port-au-Prince, Haiti, and Stockholm, Sweden. Before that, he was an attorney in the international trade practice group at the law firms of Steptoe & Johnson LLP and Kirkpatrick & Lockhart LLP. Mr. Cissna graduated from Massachusetts Institute of Technology with a BS in physics and political science; Columbia University with an MA in international affairs; and Georgetown University Law Center with a JD.

Due to USCIS's crucial role in granting many immigration benefits, the Alliance of Business Immigration Lawyers (ABIL) issued a press release urging Mr. Cissna to:

- Encourage adjudicators to apply the statutes and regulations as written
- Refrain from altering regulations through the promulgation of policy memoranda
- Solicit stakeholder input before and not after changing existing or implementing new policy
- As a benefits granting agency, return to an alien-based reading of the immigration statute and its implementing regulations

ABIL's press release is at

<http://www.prweb.com/releases/2017/10/prweb14782675.htm>. President

Trump's statement announcing his intent to nominate Mr. Cissna is at <https://www.whitehouse.gov/the-press-office/2017/04/08/president-donald-j-trump-announces-intent-nominate-lee-francis-cissna>.

[Back to Top](#)

### **3. Revised Form Allows Work Authorization and SSN Application Simultaneously for Certain Categories**

Based on a new information-sharing partnership between U.S. Citizenship and Immigration Services (USCIS) and the Social Security Administration (SSA), foreign nationals in certain categories or classifications can now apply for work authorization and a social security number using a single form, the updated Form I-765, Application for Employment Authorization.

USCIS explained that to lawfully work in the United States, foreign workers in some categories and classifications need both an employment authorization document (EAD) from USCIS and a Social Security number (SSN) from the SSA. Previously, applicants needed to submit a Form I-765 to USCIS for an EAD and then submit additional paperwork in person at their local Social Security office to obtain an SSN.

The revised USCIS form includes additional questions that allow applicants to apply for an SSN or replacement card without visiting a Social Security office. As of October 2, 2017, USCIS began transmitting the additional data collected on the form to the SSA for processing. Applicants who receive their approved EADs from USCIS should receive their Social Security card from SSA within the following two weeks.

The USCIS notice is at

<https://www.uscis.gov/news/news-releases/new-uscis-form-streamlines-process-obtain-work-authorization-document-and-social-security-number-simultaneously>

[Back to Top](#)

### **4. Premium Processing Now Available for All Petitioners Seeking H-1B Visas**

U.S. Citizenship and Immigration Services (USCIS) resumed premium processing on October 3, 2017, for all H-1B visa extension-of-stay petitions. Premium processing is now available for all types of H-1B petitions.

USCIS explained that when a petitioner requests the agency's premium processing service, USCIS guarantees a 15-calendar day processing time. If that time is not met, the agency will refund the petitioner's premium processing service fee and continue with expedited processing of the application.

In addition to the October 3 resumption of premium processing for H-1B visa extension of stay petitions, USCIS had previously resumed premium processing for H-1B petitions subject to the annual cap, petitions filed on behalf of physicians under the Conrad 30 waiver program, and interested government agency waivers and certain H-1B petitions that are not subject to the cap.

The USCIS announcement is at

<https://www.uscis.gov/news/news-releases/premium-processing-now-available-all-petitioners-seeking-h-1b-visas>.

[Back to Top](#)

## **5. USCIS Reminds About Immigration Services Available To Those Affected by Disasters**

U.S. Citizenship and Immigration Services (USCIS) released a reminder about immigration services that may help people affected by unforeseen circumstances, including disasters such as hurricanes. USCIS said the following measures may be available on a case-by-case basis upon request:

- Changing nonimmigrant status or extending a nonimmigrant stay for an individual currently in the United States. Failure to apply for the extension or change before expiration of the authorized period of admission may be excused if the delay was due to extraordinary circumstances beyond the person's control;
- Re-parole of individuals previously granted parole by USCIS;
- Expedited processing of advance parole requests;
- Expedited adjudication of requests for off-campus employment authorization for F-1 students experiencing severe economic hardship;
- Expedited adjudication of employment authorization applications, where appropriate;
- Consideration of fee waivers due to an inability to pay;
- Assistance for those who received a Request for Evidence or a Notice of Intent to Deny but were unable to submit evidence or otherwise respond in a timely manner;

- Assistance if a person was unable to appear for a scheduled interview with USCIS;
- Expedited replacement of lost or damaged immigration or travel documents issued by USCIS, such as a Permanent Resident Card (green card); and
- Rescheduling a biometrics appointment.

USCIS said that those making such requests should explain how the impact of a hurricane (or other disaster) created a need for the requested relief.

The reminder, which includes information on how to make such a request, is at <https://www.uscis.gov/news/alerts/immigration-help-available-those-affected-hurricanes>.

## **6. DOL Changes iCERT System for H-2A and H-2B Programs**

In an effort to provide better service and ensure that more complete H-2A and H-2B applications are submitted for review, the Department of Labor's Office of Foreign Labor Certification (OFLC) is releasing new enhancements to the iCERT System's application filing module that will help employers or, if applicable, their authorized attorneys or agents identify and upload required documentation supporting their applications. OFLC said new easy-to-understand steps and instructions "will serve to clarify regulatory filing requirements and improve the quality and consistency of H-2A and H-2B applications received for processing."

An employer seeking temporary labor certification under the H-2A or H-2B visa programs must submit an application and all required supporting documentation to the Department's Office of Foreign Labor Certification (OFLC) either electronically using the iCERT System (<http://icert.doleta.gov>) or by U.S. mail.

Since 2013, the iCERT System has permitted employers or, if applicable, their authorized attorneys or agents to submit H-2A and H-2B applications online, electronically upload supporting documentation, and receive all communications during the processing of their applications via email. For fiscal year 2017, more than 83% of H-2A applications and approximately 94% of H-2B applications were submitted electronically through the iCERT System. OFLC said that electronic submission of all required documentation at the time of filing "facilitates a more efficient and consistent review of the employer's application,

and reduces the incidence of the OFLC Certifying Officer returning the incomplete application without further review or issuing a Notice of Deficiency to request missing documentation."

OFLC strongly encourages employers or, if applicable, their authorized attorneys or agents to download and read the Quick Start Guides associated with these new system enhancements, available in Adobe PDF format: [H-2A program](#) or [H-2B program](#).

[Back to Top](#)

## **7. State Dept. Releases Cable on Revised Guidance re 90-Day Rule**

The Department of State recently released the following cable to the field:

UNCLASSIFIED 17 STATE 95090

Sep 16, 2017

Subject: Change to INA 212(a)(6)(C)(i) and Introduction of 90 Day Rule

1. SUMMARY: This cable advises posts on the application of INA section 212(a)(6)(C)(i) as it pertains to revised guidance at 9 FAM 302.9-4(B)(3)(g-h) regarding the 90 day rule, formerly known as the "30/60 day rule." Interagency working groups agreed to a change in policy and expanded the 30/60 day timeframe to 90 days for aliens who enter the United States and engage in activity inconsistent with their nonimmigrant status before procuring a change or adjustment of status. END SUMMARY.

### **The 90 day rule**

2. The following revised guidance replaces the 30/60 day rule and applies to all adjudications that occur after September 1. The guidance should not be applied retroactively. As detailed in the revisions to 9 FAM 302.9-4(B)(3)(g-h), aliens who violate or engage in conduct inconsistent with his or her nonimmigrant status within 90 days of entry into the United States by: 1) engaging in unauthorized employment; 2) enrolling in a course of unauthorized academic study; 3) marrying a U.S. citizen or lawful permanent resident and taking up residence in the United States while in a nonimmigrant visa classification that prohibits immigrant intent; or 4) undertaking any other activity for which a change of status or adjustment of status would be required prior to obtaining such change or adjustment,



may be presumed to have made a material misrepresentation. You must give the alien the opportunity to present evidence to rebut the presumption that he or she made a willful misrepresentation on prior visa applications or in their applications for admission to the United States before you can find the applicant ineligible under 212(a)(6)(C)(i). If the applicant is unable to overcome the presumption that he or she engaged in a willful misrepresentation, post must request an Advisory Opinion (AO) from the Visa Office of Advisory Opinions (CA/VO/L/A) per 9 FAM 302.9-4(B)(3)(h)(2)(b). If an alien violates or engages in conduct inconsistent with his or her nonimmigrant status after 90 days of entry into the United States, there generally is no presumption of willful misrepresentation. However, if facts in the case give you a reason to believe that the alien misrepresented his or her purpose of travel at the time of the visa application or application for admission, you must request an AO from CA/VO/L/A.

3. If an alien violates or engages in conduct inconsistent with his or her nonimmigrant status after 90 days of entry into the United States, there generally is no presumption of willful misrepresentation. However, if facts in the case give you a reason to believe that the alien misrepresented his or her purpose of travel at the time of the visa application or application for admission, you must request an AO from CA/VO/L/A.

The cable is at

[https://travel.state.gov/content/dam/visas/policy\\_updates/17%20STATE%2095090%20Change%20to%20INA%20212\(a\)\(6\)\(C\)\(i\)%20and%20Introduction%20of%2090%20Day%20Rule.pdf](https://travel.state.gov/content/dam/visas/policy_updates/17%20STATE%2095090%20Change%20to%20INA%20212(a)(6)(C)(i)%20and%20Introduction%20of%2090%20Day%20Rule.pdf).

[Back to Top](#)

## **8. U.S. Suspends Certain Visa Services in Turkey**

The United States has suspended certain visa services in Turkey. On October 8, 2017, the U.S. Department of State (DOS) announced that it was suspending nonimmigrant visa services at its diplomatic facilities in Turkey. Nonimmigrant visas include business, tourist, student, and temporary work authorization visas. The suspension applies to diplomatic and official visas. Ambassador John Bass said, "his suspension of services is not a visa ban on Turkish citizens. It's a suspension of our consideration of new visa applications. If you have a valid



visa, you can still travel to the United States. If you want to apply for a visa at another U.S. embassy or consulate outside of Turkey, you are free to do so."

Ambassador Bass said the suspension was due to the arrest of a Turkish staff member of the U.S. diplomatic mission in Turkey. That staff member was allegedly linked to the U.S.-based cleric Muhammed Fethullah Gülen Hocaefendi. Turkey has blamed Mr. Gülen for a failed coup, according to reports. Turkey has similarly suspended nonimmigrant visa services at its diplomatic facilities in the United States.

A statement posted by the U.S. Embassy & Consulates in Turkey said, "Turkish citizens with valid visas may continue to travel to the United States. Turkish citizens are also welcome to apply for a nonimmigrant visa outside of Turkey whether or not they maintain a residence in that country. Please note that an applicant applying outside of Turkey will need to pay the application fee for services in that country, even if a fee has previously been paid for services in Turkey."

Immigrant visas have not been suspended.

Ambassador Bass's statement is at

<https://tr.usembassy.gov/ambassador-john-bass-statement-suspension-visa-services-turkey/>. The statement from the U.S. Embassy & Consulates in Turkey is at <https://tr.usembassy.gov/visas/>. Additional information is at <https://twitter.com/USEmbassyTurkey>.

[Back to Top](#)

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

**Cyrus D. Mehta** published [Musings On Our Asylum System – After AG Sessions' Remarks on 'Dirty Immigration Lawyers'](#) on October 17, 2017.

**David Isaacson** published [From Bad to Worse: Why We Should Not Let the Trump Administration's Outrageous Immigration Demands Make the SUCCEED Act Seem Like a Reasonable Alternative](#) on October 10, 2017

[Back to Top](#)