



NOVEMBER 2017 IMMIGRATION UPDATE

Posted on November 8, 2017 by Cyrus Mehta

Headlines:

1. [Ban on Refugees Expires; Trump Administration Calls for Additional Vetting for 11 Nationalities During 90-Day Review Period](#) – The Trump administration's 120-day ban on refugee admissions expired on October 24, 2017. On the same day, the Department of State announced that additional in-depth review is needed for refugees of 11 nationalities identified as potentially posing a higher risk to the United States.
2. [USCIS Increases Scrutiny of Certain Nonimmigrant Extension Requests](#) – The agency noted that previous policy instructed officers to give deference to the findings of a previously approved petition, as long as the key elements were unchanged and there was no evidence of a material error or fraud related to the prior determination. The updated policy guidance rescinds the previous policy.
3. [State Dept. Restarts DV Lottery Due to Technical Glitch, Excludes Oct. 3-10 Entries](#) – The Department of State had a recent technical problem on the Diversity Visa lottery site and has reopened a new full entry period, which will end November 22, 2017, at 12 noon ET. The Department also is excluding October 3-10 entries and said that those who applied during that period can apply again.
4. [USCIS Changes Direct Filing Addresses for Certain Nonimmigrant Worker Petitions](#) – USCIS recently changed the direct filing addresses for certain petitioners using Form I-129, Petition for a Nonimmigrant Worker.
5. [Sen. Grassley Urges Reconsideration of Trade NAFTA Nonimmigrant Classification](#) – Sen. Grassley's letter, to Ambassador Robert E. Lighthizer, the U.S. Trade Representative, noted that "iven President Trump's willingness to reevaluate—or reject—any and all of the NAFTA agreement, in the interest of protecting American workers, I recommend that you

specifically include temporary workers in the ongoing NAFTA review."

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Details:

1. **Ban on Refugees Expires; Trump Administration Calls for Additional Vetting for 11 Nationalities During 90-Day Review Period**

The Trump administration's 120-day ban on refugee admissions expired on October 24, 2017. On the same day, the Department of State announced that "additional in-depth review is needed with respect to refugees of 11 nationalities previously identified as potentially posing a higher risk to the United States. Admissions for applicants of those 11 potentially higher-risk nationalities will resume on a case-by-case basis during a new 90-day review period."

Rex Tillerson, Secretary of State; Elaine Duke, Acting Secretary of Homeland Security; and Daniel Coats, Director of the Office of the Director of National Intelligence, sent a related memorandum on October 23, 2017, to President Trump. The State Department announcement and memo do not list the 11 countries, but according to reports, the countries appear to be Egypt, Iran, Libya, Mali, North Korea, Somalia, South Sudan, Sudan, Syria, and Yemen; and Palestinians living in those countries. The memo notes that the 11 countries were those designated on the Security Advisory Opinion (SAO) list, which was established following the 9/11 terrorist attacks on the United States and has evolved over the years through interagency consultations.

The memo states that during the 90-day review period, while a "detailed threat analysis" is being conducted of those 11 countries, the Secretaries of State and Homeland Security "will temporarily prioritize refugee applications from other non-SAO countries," and that resources that may have been dedicated to processing nationals or stateless persons of SAO countries will be reallocated during that period "to process applicants from non-SAO countries for whom the processing may not be as resource intensive."

The Department also announced on October 24 that "or family members who are 'following-to-join' refugees that have already been resettled in the United States, additional security measures must also be implemented for all nationalities. Admissions of following-to-join refugees will resume once those enhancements have been implemented." The October 23 memo states that Mr.

Tillerson, Ms. Duke, and Mr. Coats "have jointly determined that additional security measures must be implemented before admission of following-to-join refugees can resume." Those measures are to include "adequate screening mechanisms" that are "similar to the processes employed for principal refugees."

An Executive Order issued by President Trump on October 24, 2017, states, among other things, that within 180 days, the Attorney General will "provide a report to the President on the effect of refugee resettlement in the United States on the national security, public safety, and general welfare of the United States. The report shall include any recommendations the Attorney General deems necessary to advance those interests."

The Executive Order also states that within 90 days of October 24, 2017, and annually thereafter, the Secretary of Homeland Security will determine "whether any actions taken to address the risks to the security and welfare of the United States presented by permitting any category of refugees to enter this country should be modified or terminated, and, if so, what those modifications or terminations should be."

Meanwhile, President Trump announced that the maximum number of refugee admissions to the United States in fiscal year 2018 will be lowered to 45,000, which is the lowest number since the Refugee Act was passed in 1980.

The U.S. Supreme Court said on October 24, 2017, that it would not consider the merits or legality of the Trump administration's travel ban, issued in March, due to its expiration. Other challenges to new Presidential orders are working their way through lower courts.

The Department of State's October 24 announcement is at <https://www.state.gov/r/pa/prs/ps/2017/10/275074.htm>. The October 23 memo is at <https://www.state.gov/documents/organization/275306.pdf>. President Trump's related Executive Order is at <https://www.whitehouse.gov/the-press-office/2017/10/24/presidential-executive-order-resuming-united-states-refugee-admissions>. The White House announcement of the 45,000 refugee cap for FY 2018 is at <https://www.whitehouse.gov/the-press-office/2017/09/29/president-donald-j-trump-taking-responsible-and-humanitarian-approach>.

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2. USCIS Increases Scrutiny of Certain Nonimmigrant Extension Requests

Under updated policy guidance, U.S. Citizenship and Immigration Services (USCIS) is instructing its officers to apply the same level of scrutiny to both initial petitions and extension requests for certain nonimmigrant visa categories. The guidance applies to nearly all nonimmigrant classifications filed using Form I-129, Petition for a Nonimmigrant Worker.

The agency noted that previous policy instructed officers to give deference to the findings of a previously approved petition, as long as the key elements were unchanged and there was no evidence of a material error or fraud related to the prior determination. The updated policy guidance rescinds the previous policy, USCIS said.

USCIS explained that as before, adjudicators must thoroughly review the petition and supporting evidence to determine eligibility for the benefit sought. The updated guidance instructs officers to apply the same level of scrutiny when reviewing nonimmigrant visa extension requests, even where the petitioner, beneficiary, and underlying facts are unchanged from a previously approved petition. "While adjudicators may ultimately reach the same conclusion as in a prior decision, they are not compelled to do so as a default starting point as the burden of proof to establish eligibility for an immigration benefit always lies with the petitioner," USCIS said, adding that the adjudicator's determination "is based on the merits of each case, and officers may request additional evidence if the petitioner has not submitted sufficient evidence to establish eligibility."

The Alliance of Business Immigration Lawyers (ABIL) advises employers and employees to treat nonimmigrant extension applications as no longer routine, and to include the same documentation as required in an initial petition. ABIL also advises allowing more time to file such applications; 180 days before the current petition expires is recommended. Nonimmigrants may want to consider accelerating permanent residence processing. Litigation of extension petitions may be possible in some cases. Contact your ABIL attorney for advice and help in specific situations.

The USCIS announcement is at

<https://www.uscis.gov/news/news-releases/uscis-updates-policy-ensure-petitioners-meet-burden-proof-nonimmigrant-worker-extension-petitions>. The

updated policy guidance is at

<https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2017/2017-10-23Rescission-of-Deference-PM6020151.pdf>.

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3. State Dept. Restarts DV Lottery Due to Technical Glitch, Excludes Oct. 3-10 Entries

The U.S. Department of State had a recent technical problem on its Diversity Visa (DV) green card lottery site and has reopened a new full entry period, which started October 18, 2017, at 12 noon ET and will end November 22, 2017, at 12 noon ET. The Department also is excluding October 3-10 entries and said that those who applied during that period can apply again:

Due to a technical issue, the DV-2019 entry period that began on October 3 has been closed. Entries submitted during October 3-10 are not valid and have been excluded from the system; they will not count as a duplicate entry. The technical issue has been resolved and a new full entry period will begin at noon, U.S. Eastern Daylight Time on Wednesday October 18, 2017 and will run until noon Eastern Standard Time on Wednesday November 22, 2017. Only entries submitted during this period will be accepted and considered for selection in the lottery. Please throw away any confirmation number or other documentation that you have if you submitted an entry during Oct. 3-10 Entries will NOT be accepted through the U.S. Postal Service.

The statement and a link to the DV-2019 instructions, registration, and status check are at

[https://www.dvlottery.state.gov/\(S\(dcwxi52os10uan4v5iqjeall\)\)/default.aspx](https://www.dvlottery.state.gov/(S(dcwxi52os10uan4v5iqjeall))/default.aspx).

General information about the diversity lottery green card program is at

<https://travel.state.gov/content/visas/en/immigrate/diversity-visa/entry.html>.

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4. USCIS Changes Direct Filing Addresses for Certain Nonimmigrant Worker Petitions

U.S. Citizenship and Immigration Services (USCIS) recently changed the direct filing addresses for certain petitioners using Form I-129, Petition for a Nonimmigrant Worker. The changes include:

- Petitioners should now file Form I-129 according to the state where the company or organization's primary office is located. Previously, petitioners filed their I-129s based on the beneficiary's temporary employment or training location.
- Petitioners located in Florida, Georgia, North Carolina, and Texas should now file Form I-129 at the California Service Center.

Starting November 11, 2017, USCIS may reject Form I-129s that are filed at the wrong service center. Instructions on where to file are at <https://www.uscis.gov/i-129-addresses>. The related announcement is at <https://www.uscis.gov/news/alerts/changes-direct-filing-addresses-form-i-129-petitions>.

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5. **Sen. Grassley Urges Reconsideration of Trade NAFTA Nonimmigrant Classification**

Sen. Charles Grassley (R-Iowa), chairman of the Senate Committee on the Judiciary, sent a letter on October 23, 2017, to Ambassador Robert E. Lighthizer, the U.S. Trade Representative, to express "ongoing concerns regarding the uncapped TN nonimmigrant classification," which is a component of the North American Free Trade Agreement (NAFTA). Sen. Grassley asked Mr. Lighthizer to "consider renegotiating the guest worker provisions of NAFTA as part of any broader examination of the treaty."

Sen. Grassley's letter notes, among other things, that given the Trump administration's "focus on protections for the American worker, including efforts to rein in the H-1B program, businesses will be looking for alternative sources of cheap foreign labor to exploit." He suggests that employers are likely to turn to the TN visa category. The letter notes that the TN visa, "if left unchanged in its current form, could well undermine the administration's broader efforts." He notes that the number of TN visa workers employed in the United States has been growing in recent years and that available statistics suggest that "the number could be approaching 100,000."

Sen. Grassley's letter noted, "Given President Trump's willingness to reevaluate—or reject—any and all of the NAFTA agreement, in the interest of protecting American workers, I recommend that you specifically include temporary workers in the ongoing NAFTA review."

A statement from Sen. Grassley and the full text of the letter are at <https://www.grassley.senate.gov/news/news-releases/grassley-encourages-review-high-skilled-worker-program-nafta-negotiations>.

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6. Firm In the News

Cyrus D. Mehta published [Stopping H-1B Carnage](#) on October 23, 2017; [The Empire Strikes Back – USCIS Rescinds Deference To Prior Approvals In Extension Requests](#) on October 30, 2017; and with Sophia Genevose-Halvorson [Expanding the Rights of Immigrants by Voting ‘Yes’ for a New York Constitutional Convention](#) on November 5, 2017.

Cyrus D. Mehta was a Speaker, *Dissecting the Skilled Worker Regulations*, LAAC District Chapter of AILA Global Citizenship and Foreign National Conference, Casa de Campo, Dominican Republic, November 3, 2017.

Cyrus D. Mehta was a Speaker, *Beyond the Wall: The New Administration’s Impact on Global Immigration*, organized by ABA Section of International Law, 2017 Fall Meeting, Miami, FL, October 27, 2017.

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