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

JANUARY 2018 IMMIGRATION UPDATE

Posted on January 2, 2018 by Cyrus Mehta

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statutory authority.

6. EB-5, Special Immigrant Religious Worker Categories Extended to January 19 – The Department of State's Visa Bulletin for January 2018 discusses the scheduled expiration of two employment-based visa categories. Both have been extended at least until January 19, 2018, with passage of a short-term continuing resolution in Congress.
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9. Cuba News: USCIS Rescinds *Matter of Vazquez* as Adopted Decision; U.S. Embassy in Havana Temporarily Suspends Operations – USCIS has made several announcements recently with respect to Cuba, including issuing a new policy memorandum that rescinds *Matter of Vazquez* as an Adopted Decision, and temporarily suspending operations at its field office in Havana.
10. ABIL Global: France – The French government, in its continual effort to facilitate international professional mobility, is rolling out several digital tools to simplify entry and work procedures in France for foreign employees. The latest important innovation is the online portal "France Visas," which allows applying for visas online. This portal is in addition to a number of other applications already in place for electronic registration and declarations relating to the international mobility of foreign employees.
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Details:

1. ABIL Commentary: Threats, Opportunities for Employers in 2018

After a tumultuous, difficult year in 2017 with respect to immigration and border issues, attorneys from the Alliance of Business Immigration Lawyers

(ABIL), of which our firm is a member, shared their thoughts on what employers can expect in 2018. Below is a summary of their responses and reports from the field.

Where Things Stand Now

The Trump administration appears to be attempting to keep various campaign promises on immigration and border enforcement that mesh with the President's (and his supporters') overall dim view of foreign people entering the United States. Before he was elected, President Trump made a wide range of anti-immigration promises couched in national security terms. Those promises included, among other things, building a massive wall along the southern border and making Mexico pay for it; immediately deporting undocumented migrants; barring Muslims from entering the United States; "extreme vetting" of immigrants; and creating a "deportation force." The President has waffled on Deferred Action for Childhood Arrivals (DACA) “Dreamers,” verbally expressing his support and understanding of their plight and then canceling the DACA program with an exhortation for Congress to handle it.

Executive orders issued since his inauguration have included various entry/travel bans, limits on refugees, and threats to sanctuary cities to pull their federal funding. The first travel ban on people entering from several predominantly Muslim countries was announced seven days after his inauguration with no apparent advance process, discussion, preparation, warning, or guidance to the Department of Homeland Security. The result was chaos and protests at airports. Various court challenges and subsequent travel bans ensued.

Arrests for "noncriminal immigration violators" are up, with 31,888 noncriminal arrests during the first eight months of the Trump administration, according to U.S. Customs and Immigration Enforcement. On the other hand, deportations have actually decreased by about 14,000 this year, reports say, but Attorney General Jeff Sessions has called for a "concerted effort" by immigration courts to speed up processing of pending immigration cases.

Concerns for 2018

Current concerns for 2018 include:

- Animosity of the administration toward immigrants: "This is leaching into all areas of USCIS adjudications and the attitude of travelers with a bona

fide legal basis for entry," one attorney reported. "They will do as they please right now until challenged," said another.

- Creeping arbitrariness and unpredictability: Attorneys report clients being held up at the border or turned away in some cases due to considerations that do not seem to be based in law or regulation. Denials are being issued in some cases filed by employers on behalf of professionals that previously would have been considered routine. Some agents of the federal government appear to believe it is now open season on cracking down, and to be acting accordingly. Officers are no longer required to defer to previous decisions when extensions are requested. An attorney reported an example of such decision-making: a "perfectly clean" request for a three-year L-1 worker was approved without an RFE for one year because "she is an employee at will, so only one year is allowed." Another attorney reported similar treatment for Trade NAFTA clients at certain ports of entry. A third attorney said, "To me the top threat is something that affects everything we do—it is the sense (which is not universal but permeates the ranks) inside that they have impunity and are not bound by the rule of law. Unless and until employers adopt a long-term view and sue—as opposed to the short-term approach of just refiling and hoping for a better result—the agencies are right."
- More and more demands for additional documents, interviews, and requests for evidence (RFEs): Among other things, U.S. Citizenship and Immigration Services (USCIS) is reportedly considering mandatory interviews for all applications to renew or replace green cards (Forms I-90). Interviews for petitions to remove conditions on residence for certain married couples (I-751) are already a "nightmare." USCIS is phasing in interviews for adjustment of status applications based on employment, including for some who have already filed their applications. Executive orders are requiring visa applications and adjudications to be reviewed for compliance with "extreme vetting" and "Buy American/Hire American" policies, for both initial petitions and extensions. There has been a sharp uptick (45% compared to last year, according to USCIS) in RFEs on H-1B visa petitions for skilled workers.
- Massive backlogs and delays in applications and petitions increasing as a result of the greater scrutiny, in some cases leading to disruptions in travel, work, and study plans.
- Attorneys' fees increasing as a result of the additional work.

- An overall "brain drain" and reduction in quality employees as immigration decreases, deportations increase, and more and more people leave the United States for Canada or other countries perceived to be friendlier to immigration, or never apply to enter the United States in the first place.
- Arbitrary caps on H-2B workers and lack of a returning worker exemption.
- A lack of visa categories for unskilled workers who are not temporary (which constitutes about 75% of the entire workforce).
- Denials of advance parole renewal requests filed by green card applicants if they leave the country.
- Stress on employers as they find it harder to fill important positions in a timely manner or are accused of not wanting to hire U.S. workers when in some cases there are simply not enough U.S. workers qualified and available to take the jobs.
- Stress on clients, including would-be immigrants and their families; family separation; stress on attorneys.
- Travel restrictions on people from certain countries based on a new ban issued in September that the Supreme Court allowed to be put into effect while appeals run their course.
- Ending temporary protected status for some (e.g., Nicaraguans and Haitians), and making it harder to designate or extend such status in the future.
- A planned removal of the regulation allowing certain H-4 spouses of H-1B nonimmigrants to obtain employment authorization documents (EADs), with a notice of proposed rulemaking scheduled for February 2018. This is expected to result in lost filing fees and labor turnover costs for employers with workers on H-4 EADs.
- A proposed electronic registration program for H-1B petitions subject to numerical restrictions, with a notice of proposed rulemaking considered for February 2018, along with possible further restrictions on H-1B visas.
- A proposal to make it more difficult to obtain a J-1 waiver.
- Privacy issues: As of the middle of fiscal year 2017, approximately 30,000 travelers had their electronic devices searched at the border or at ports of entry. This was three times the number searched in 2015.

Future Concerns

In addition to those noted above, future concerns include:

- A planned revision (not yet described) of the definition of Specialty Occupation for H-1B workers and additional requirements for H-1B wages, with a notice of proposed rulemaking scheduled for October 2018.
- Proposed new requirements for F and M students with respect to the practical training period, to include increased oversight of schools and participating students, with a notice of proposed rulemaking scheduled for October 2018.

Hopeful Signs

Although no one has a crystal ball and things look bleak overall for the foreseeable future on the immigration front, there are a few positive indications on the horizon. For example, according to reports, after conferring with President Trump, leaders in Congress are seriously considering introducing a measure in January 2018 to allow DACA "Dreamers" to stay in the United States. As of September 4, 2017, there were 689,821 people with valid DACA status in the country. Sen. Lindsey Graham (R-SC) was quoted in late December following a meeting with President Trump: "He wants to make a deal. He wants to fix the entire system."

Also reportedly under serious consideration is meaningful EB-5 reform legislation, such as the Fairness for High-Skilled Immigrants Act, which would allow some EB-5 investors to obtain immigrant visas more quickly because their place in the waiting line would no longer depend on the nation of chargeability. And USCIS began accepting applications again under the International Entrepreneur Rule in December, albeit temporarily while the agency drafts a notice of proposed rulemaking to quash it permanently.

Otherwise, some court challenges are either already working their way through the system (e.g., on the latest travel ban) or may be filed in the future.

Recommendations

In general, ABIL recommends that employers and employees consider:

- Allowing much more time than before for the application/petition process. Posted processing times are not reliable. Several additional months may be required if there is an RFE or an unanticipated additional security check or other problem.
- Filing a mandamus action in federal court to compel the agency to act if a case experiences extreme processing delays.

- Not leaving the United States in the short term if status is in any way uncertain.
- Contacting your ABIL attorney for advice and help in specific situations.

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2. **REAL ID Act: New Security Measures Start January 22**

Starting January 22, 2018, passengers who have driver's licenses issued by a state that does not yet comply with the REAL ID Act and that has not received an extension will need to show an alternative form of acceptable identification for domestic air travel. Passengers who have licenses issued by a state that is complying or that has an extension to become compliant with REAL ID requirements may continue to use their licenses as usual.

Starting October 1, 2020, every air traveler must present a REAL ID-compliant license or another acceptable form of identification for domestic air travel. A REAL ID compliant license is one that meets, and is issued by a state that complies with, the REAL ID Act's security standards.

The Department of Homeland Security (DHS) noted that REAL ID allows compliant states to issue driver's licenses and identification cards where the identity of the applicant cannot be assured or for whom lawful presence is not determined. Some states currently issue such noncompliant cards to undocumented individuals. These cards must clearly state on their face (and in the machine-readable zone) that they are not acceptable for official purposes and must use a unique design or color to differentiate them from compliant cards, DHS said. DHS cautioned against assuming that possession of a noncompliant card indicates the holder is an undocumented individual, given that several states issue noncompliant licenses for reasons unrelated to lawful presence.

Many states are already REAL ID compliant. DHS reportedly has granted the following states and territories an extension until October 2018 to meet federal standards and make their state-issued IDs compliant: Alaska, American Samoa, California, Guam, Idaho, Illinois, Kentucky, Maine, Massachusetts, Minnesota, Missouri, Montana, Northern Mariana Islands, New Hampshire, New Jersey, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Texas, U.S. Virgin Islands, Virginia, and Washington.

States under review for a renewed extension include New York, Michigan, and Louisiana.

Travelers can check DHS's website for additional information and can check with a state's driver's license-issuing agency about how to acquire a compliant license. DHS's REAL ID webpage is at https://www.dhs.gov/real-id. DHS's Transportation Security Administration's list of acceptable forms of identification for airport checkpoints is at https://www.tsa.gov/travel/security-screening/identification.

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3. **DHS Implements New VWP Security Measures**

Secretary of Homeland Security Kirstjen M. Nielsen announced on December 15, 2017, that the Department of Homeland Security (DHS), in consultation with the Department of State and other federal agencies, is implementing new security requirements for the Visa Waiver Program (VWP). VWP allows citizens of 38 countries to travel to the United States for business or tourism for stays of up to 90 days without a visa. Each year, the United States allows more than 20 million visitors to travel to the United States under the VWP.

The new measures include requiring VWP countries "to use counterterrorism information to better screen travelers," assessing VWP countries "to ensure they implement safeguards against the aviation sector," and requiring certain VWP countries "to initiate public information campaigns to reduce overstays."

Specifically, DHS is introducing the following measures applicable to all countries in the VWP:

- Requiring VWP countries to fully implement existing information-sharing arrangements by systematically screening travelers crossing their borders against U.S. counterterrorism information;
- Assessing VWP countries on the effectiveness of safeguards against insider threats in the aviation security environment; and
- Requiring VWP countries having a two percent or greater rate of business or tourism nonimmigrant visitors overstaying the terms of their admission into the United States to initiate a public information campaign to reduce overstay violations by educating their nationals on the conditions for admission into the United States.

DHS reportedly said that Hungary, Greece, Portugal, and San Marino will launch public campaigns to inform their citizens because two percent of travelers from those countries overstayed their terms of admission.

DHS is also asking Congress to codify existing VWP requirements to bolster efforts in the following areas:

- Reporting of foreign terrorist fighter information to multilateral organizations, such as INTERPOL and EUROPOL;
- Systematically collecting and analyzing passenger travel data (Advance Passenger Information/Passenger Name Records); and
- Concluding arrangements to permit U.S. Federal Air Marshals to operate onboard U.S. air carriers for last point of departure flights to the United States.

As part of its regular cooperation with VWP countries, DHS said it "will develop targeted engagement plans to support implementation of these measures." DHS has assessed that these security enhancements will not hinder lawful trade and travel. Qualified nationals will continue to be able to travel to the United States under the VWP, DHS noted.

DHS also said that travelers in the following categories are no longer eligible to travel or be admitted to the United States under the VWP:

- Nationals of VWP countries who have traveled to or been present in Iran, Iraq, Sudan, Syria, Libya, Somalia, or Yemen on or after March 1, 2011 (with limited exceptions for travel for diplomatic or military purposes in the service of a VWP country); and
- Nationals of VWP countries who are also nationals of Iran, Iraq, Sudan, or Syria.

In addition, travelers must have an e-passport to use the VWP. An e-passport is an enhanced secure passport with an embedded electronic chip. An e-passport is readily identified by a unique international symbol on the cover.

DHS Secretary Nielsen's statement is at https://www.dhs.gov/news/2017/12/15/secretary-kirstjen-nielsen-announces-targeted-security-enhancements-visa-waiver. Additional information on the VWP, including a list of participating countries, is at https://www.dhs.gov/visa-waiver-program-requirements.

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4. **USCIS Announces Restrictions on TN Economist Status**

U.S. Citizenship and Immigration Services (USCIS) recently published policy guidance on the specific work activities its officers should consider when determining whether an individual qualifies for Trade NAFTA (TN) nonimmigrant status as an economist. The policy guidance states that financial analysts, marketing analysts, and market research analysts are not eligible for classification as a TN economist.

North American Free Trade Agreement (NAFTA) TN nonimmigrant status allows qualified Canadian and Mexican citizens to temporarily enter the United States to engage in specific professional activities, including the occupation of economist. The agreement, however, does not define the term economist, which USCIS said has resulted in inconsistent decisions about whether certain analysts and financial professionals qualify for TN status as economists.

USCIS said the new policy is consistent with the Department of Labor's (DOL's) Standard Occupational Classification (SOC) system. DOL defines economists as people who conduct research, prepare reports, or formulate plans to address economic problems related to the production and distribution of goods and services or monetary and fiscal policy. Economists may collect and process economic and statistical data using sampling techniques and econometric methods. The definition specifically excludes market research and marketing analyst occupations, USCIS said.

With respect to the occupation of financial analyst, USCIS said it recognizes that economists and financial analysts are related occupations and that there may occasionally be some similarity in the activities of these two occupational categories. As differentiated from economists, however, financial analysts "primarily conduct quantitative analyses of information affecting investment programs of public or private institutions," USCIS said. Recognizing that these types of positions are not the same, the SOC separates these occupations into two categories. Therefore, to be consistent with the SOC, USCIS said it is clarifying that economists and financial analysts are two separate occupations for the purposes of qualifying for TN nonimmigrant status pursuant to NAFTA.

Some attorneys warn that TN Economists—even those who were previously approved—could experience increased scrutiny when returning to the United

States. Strategies may include arguing that a position meets the definition of an economist, amending the position description, avoiding international travel, or considering nonimmigrant alternatives. Contact your Alliance of Business Immigration Lawyers attorney for advice in specific situations.

The USCIS policy memo is at https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2017/2017-1120-PM-602-0153_-TN-Economists.pdf.

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5. **Judge Lifts Trump Ban on Certain Following-to-Join Refugees**

On December 23, 2017, a federal judge in Seattle preliminarily enjoined federal agencies from enforcing a Trump administration-imposed ban on certain following-to-join refugees from entering the United States. The court said that it did so at an early stage in the proceedings because the plaintiffs showed that they were likely to succeed on their claims that the agencies exceeded their statutory authority and also that the plaintiffs meet other qualifying factors necessary for preliminary injunctive relief.

The court noted that the plaintiffs in the two motions at issue are refugees "in dire circumstances," whose family members "yearn to be reunited with them," and humanitarian organizations whose fundamental mission is "to help these vulnerable refugees resettle in the United States." Among the plaintiffs are a Somali immigrant, admitted to the United States in 2014 as a refugee, who became a lawful permanent resident in 2016. He filed a petition to bring his wife and children to the United States as following-to-join refugees. His wife and children completed their final interviews and security and medical clearances, received a formal assurance from a refugee resettlement agency, and were on the brink of travel but have not yet received permission from the Department of Homeland Security to travel. His wife and oldest stepson are both Kenyan citizens, so the U.S. Embassy in Somalia said they could travel to the United States, but said that his four- and five-year-old sons could not do so because they are considered Somali citizens due to their father's nationality.

Another plaintiff is an Iraqi national who served as an interpreter for the U.S. military, which put him in extreme danger in Iraq. He fled Iraq for Cairo, Egypt, without his family in 2014 and applied for refugee status in the United States. He was conditionally approved for U.S. resettlement in December 2015 and

received an assurance of sponsorship from a resettlement agency. He was told to get ready to travel to the United States and was updating his passport when the restrictions on refugee admissions went into effect.

Also among the plaintiffs is a transgender woman who faces extreme harassment and persecution in Egypt because of her gender identity. Her refugee application was being processed on an expedited basis until the restrictions took effect.

The organizational plaintiffs, which include Jewish Family Services and the American Civil Liberties Union, are also suffering "irreparable harm," the court said. They have dedicated significant resources to helping refugees from the countries in question. Due to the government's actions, the organizations claim they will need to lay off employees, reduce services, cancel established programs, lose institutional knowledge, and ultimately lose goodwill with volunteers and community partners. Evidence of these threatened losses supported a finding of the possibility of irreparable harm, the court said, adding that the indefinite duration of the "delay" in admitting the refugees "leaves the organizations unable to operate or plan effectively, further deteriorating goodwill and adding to their harms." Further, the court noted, the organizations cannot simply shift resources to "unaffected" refugees as the government suggested. Rather, they have built programs specifically to serve Muslim and Arabic-speaking refugees.

Among other things, the government asserted that the "doctrine of consular nonreviewability" applied to the claims in this case. However, the court observed that courts have traditionally applied that doctrine to bar challenges to decisions by consular officials adjudicating individual visa applications. In this case, the court noted, defendants relied on out-of-circuit authority to argue for a significant expansion of the doctrine and stated that the principle underlying that doctrine applies regardless of the manner in which the executive branch denies entry to an alien abroad, including a refugee applicant. The court noted that the individual plaintiffs did not seek review of an individual consular officer's decision to grant or deny a visa pursuant to valid regulations, but rather the government's promulgation of sweeping immigration policy. Courts can and do review constitutional and statutory challenges to the substance and implementation of immigration policy, the court said.

The court also noted that while the Secretary of Homeland Security has

discretion in deciding the outcome of a refugee application, the law does not specify that the Secretary has discretion to suspend adjudication such applications. The court said, "In other words, the Secretary may have discretion over what the decision will be, but not over whether a decision will be made."

The court also observed that the government offered no evidence that the suspension of admissions of refugees from certain countries was in response to a national security or foreign affairs crisis. The justification offered seemed to be that the government continued to have unspecified concerns regarding the admission of refugees from certain countries. The court agreed that the government has a "compelling" interest in national security, but noted that the government did not point to any specific national security threat that the restrictions curtail.

The court said that the preliminary injunction applies to all following-to-join refugees because, by definition, they have a bona fide relationship with a person in the United States, which is required based on a recent Supreme Court decision. The same, however, is not true for all refugees from the banned countries. "These refugees are not necessarily in a relationship with a United States person or organization," the court noted.

The court noted that this is an area of "rapidly developing law with related cases presently on appeal and decisions anticipated shortly." Stay tuned.

The decision is at https://www.politico.com/f/?id=00000160-8609-dcd4-a96b-b7290b5b0001.

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6. **EB-5, Special Immigrant Religious Worker Categories Extended to January 19**

The Department of State's Visa Bulletin for January 2018 states the following with respect to scheduled expiration of two employment-based visa categories. Both have been extended at least until January 19, 2018, with passage of a short-term continuing resolution in Congress:

> **Employment Fourth Preference Certain Religious Workers (SR):**
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> Pursuant to the continuing resolution, signed on December 7, 2017, the non-minister special immigrant program expires on December 22, 2017. No SR visas may be issued overseas, or final action taken on adjustment of

status cases, after midnight December 21, 2017. Visas issued prior to this date will only be issued with a validity date of December 21, 2017, and all individuals seeking admission as a non-minister special immigrant must be admitted (repeat, admitted) into the U.S. no later than midnight December 21, 2017.

The final action date for this category has been listed as "Unavailable" for January. If there is legislative action extending this category for FY 2018, the final action date would immediately become "Current" for January for all countries except El Salvador, Guatemala, and Honduras which would be subject to a December 1, 2015 final action date, and for Mexico which would be subject to a June 1, 2016 date.

Employment Fifth Preference Categories (I5 and R5):

The continuing resolution signed on December 7, 2017 extended this immigrant investor pilot program until December 22, 2017. The I5 and R5 visas may be issued until close of business on December 22, 2017, and may be issued for the full validity period. No I5 or R5 visas may be issued overseas, or final action taken on adjustment of status cases, after December 22, 2017.

The final action dates for the I5 and R5 categories have been listed as "Unavailable" for January. If there is legislative action extending them for FY 2018, the final action dates would immediately become "Current" for January for all countries except China-mainland born I5 and R5 which would be subject to a July 22, 2014 final action date.

The January 2018 Visa Bulletin is at https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2018/visa-bulletin-for-january-2018.html.

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7. **TPS Extended for Honduras Until July 2018, Terminated for Nicaragua in January 2019**

The Department of Homeland Security recently announced that the temporary protected status (TPS) designation has been extended for Honduras until July 5, 2018, and will be terminated for Nicaragua as of January 5, 2019. Details are below.

Honduras

The designation of Honduras for TPS was set to expire on January 5, 2018. The Secretary of Homeland Security did not make a determination on Honduras's designation by November 6, 2017, the statutory deadline. Accordingly, the TPS designation of Honduras is automatically extended for 6 months, from January 6, 2018, through July 5, 2018. The 60-day re-registration period began December 15, 2017, and runs through February 13, 2018.

In the notice announcing the extension on December 15, 2017, the Department of Homeland Security said that before July 5, 2018, the Secretary will review the conditions in Honduras and decide whether extension, redesignation, or termination is warranted in accordance with the TPS statute. During this period, "beneficiaries are encouraged to prepare for their return to Honduras in the event Honduras's designation is not extended again and if they have no other lawful basis for remaining in the United States, including requesting updated travel documents from the Government of Honduras," DHS said.

Nicaragua

The TPS designation of Nicaragua is also set to expire on January 5, 2018. The Secretary of Homeland Security announced on December 15, 2017, that the TPS designation of Nicaragua will be terminated effective January 5, 2019. The 60-day re-registration period began December 15, 2017, and runs through February 13, 2018. DHS said that "t is important for re-registrants to timely re-register during this 60-day period and not to wait until their EADs expire."

Nationals of Nicaragua (and those having no nationality who last habitually resided in Nicaragua) who have been granted TPS and wish to maintain their TPS and receive TPS-based employment authorization documents (EADs) valid through January 5, 2019, must re-register for TPS in accordance with the procedures set forth in the notice.

The TPS notice for Honduras is at https://www.gpo.gov/fdsys/pkg/FR-2017-12-15/html/2017-27140.htm. The TPS notice for Nicaragua is at https://www.gpo.gov/fdsys/pkg/FR-2017-12-15/html/2017-27141.htm.

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8. **USCIS Reaches H-2B Cap for First Half of FY 2018**

U.S. Citizenship and Immigration Services (USCIS) recently announced that it has reached the congressionally mandated H-2B cap for the first half of fiscal year 2018.

December 15, 2017, was the final receipt date for new H-2B worker petitions requesting an employment start date before April 1, 2018. USCIS will reject new cap-subject H-2B petitions received after December 15 that request an employment start date before April 1, 2018.

USCIS continues to accept H-2B petitions that are exempt from the congressionally mandated cap. This includes the following types of petitions:

- Current H-2B workers in the United States petitioning to extend their stay and, if applicable, change the terms of their employment or change their employers;
- Fish roe processors, fish roe technicians, and/or supervisors of fish roe processing; and
- Workers performing labor or services in the Commonwealth of the Northern Mariana Islands and/or Guam from November 28, 2009, until December 31, 2019.

USCIS is currently accepting cap-subject petitions for the second half of FY 2018 for employment start dates on or after April 1, 2018.

U.S. businesses use the H-2B program to employ foreign workers for temporary nonagricultural jobs. Congress has set the H-2B cap at 66,000 per fiscal year, with 33,000 for workers who begin employment in the first half of the fiscal year (October 1 through March 31) and 33,000 for workers who begin employment in the second half of the fiscal year (April 1 through September 30).

USCIS encourages H-2B petitioners to visit the H-2B fiscal year 2018 cap season webpage at https://www.uscis.gov/working-united-states/temporary-workers/h-2b-non-agricultural-workers/cap-count-h-2b-nonimmigrants.

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9. Cuba News: USCIS Rescinds *Matter of Vazquez* as Adopted Decision; U.S. Embassy in Havana Temporarily Suspends Operations

U.S. Citizenship and Immigration Services (USCIS) has made several

announcements recently with respect to Cuba, including issuing a new policy memorandum that rescinds *Matter of Vazquez* as an Adopted Decision, and temporarily suspending operations at its field office in Havana.

Rescission of *Matter of Vazquez* as an Adopted Decision

A new policy memorandum rescinds *Matter of Vazquez* as an Adopted Decision. The new memorandum supersedes all prior guidance regarding the determination of Cuban citizenship for purposes of adjustment under the Cuban Adjustment Act. The memo is at https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2017/2017-12-21-PM-602-0154-Matter-of-Vazquez-Rescission.pdf.

Temporary Suspension of Operations in Havana

U.S. Citizenship and Immigration Services (USCIS) announced that due to staff reductions at the U.S. Embassy in Havana, Cuba, USCIS will temporarily suspend operations at its field office in Havana, effective immediately. During this time, the USCIS field office in Mexico City, Mexico, will assume Havana's jurisdiction.

USCIS says that individuals who live in Cuba must follow the filing instructions in the announcement at https://www.uscis.gov/news/alerts/updated-uscis-procedures-cuba. The U.S. Embassy website for Cuba is at https://cu.usembassy.gov/visas/.

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10. ABIL Global: France

The French government, in its continual effort to facilitate international professional mobility, is rolling out several digital tools to simplify entry and work procedures in France for foreign employees. The latest important innovation is the online portal "France Visas," which allows applying for visas online. This portal is in addition to a number of other applications already in place for electronic registration and declarations relating to the international mobility of foreign employees.

A New Online Service: "France Visa"

The online portal "France Visas," the official website of visas for France, has been available since September 2017 but is gradually being developed to allow people to file online applications for tourism or professional visas. The portal at https://france-visas.gouv.fr/ (English) is a "beta" version, which is not yet

available for all countries and is expected to continue to evolve.

"France Visas" allows the automated processing of personal data when applying for entry visas to France for short or long stays. The French government is seeking to facilitate processing of visa applications, tracking of decisions and appeals, and prevention of fraud and misuse. The Internet platform will provide the information required for submitting a visa application and will allow a user to track an application.

The application process will include automatic consultation of several databases: the Schengen Information System (SIS II), the Visa Information System (VIS), the wanted persons list (RPF), and the Interpol travel document list.

All data may be collected by French consulates, agents at external border crossing points, prefectures, and outsourced service providers who guarantee data protection in accordance with French law.

The data retention period is set at five years, from either the expiration date of the visa or the date of creation of the file in case of refusal or interruption of the application. Rights of access and rectification of data are governed by the provisions of the French "Data Protection Act."

Online Declaration of Foreign Employees Posted to France—"SIPSI"

Any employer established outside France who sends employees to French territory must send a prior declaration of posting of the employees to the labor inspectorate of the place of performance of the service before the start of the service in France. The posting declaration, provided for in articles R. 1263-3 and R. 1263-4, is sent via the "SIPSI" online service (https://www.sipsi.travail.gouv.fr/) to the Foreign Labor Service (SMOE) of the place where the service is performed. When the service is performed in several locations, the posting declaration is sent to the SMOE where the service is first performed. The SIPSI online declaration, first implemented in July 2016, is now fully operational and allows foreign employers posting salaried staff in France to carry out this formality in a simplified manner.

A fee of €40 per application will be charged, starting January 2018, to defer the ongoing costs of SIPSI, per decree of May 3, 2017.

The absence of a posting declaration can lead to the suspension of the service,

and a fine of €2000 per detached employee not declared.

Opening Rights to Social Security for Certain Workers—Online Service

Since November 2017, it is now possible to register foreign employees under the French social security system through the AMELI.fr online service. However, at this stage only employees who have entered France under "Passport Talent" status, foreign employees employed in Ile-de-France, models, and foreign language assistants can benefit from this service.

Requests for registration are processed directly by the International Relations Department of Social Security. An employer can open an account on the dedicated website https://www.ameli.fr/ and proceed with the registration of foreign employees eligible for the online service. A temporary social security number is sent within two days and the certificate of rights in about 15 days.

In addition to the redesign of residence permits for professional reasons stemming from a March 2016 law, the implementation of online procedures simplifies the administrative requirements and improves the attractiveness of France in exchange for a reinforced control of foreign employers and employees working in France.

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11. **Firm In the News**

Cyrus D. Mehta was a Speaker, *Ethics, Business Development and Practice Management in A Digital Age*, 19th AILA New York Chapter Immigration Law Symposium, New York, NY, December 18, 2017.

Cyrus D. Mehta published Calling Out President Trump's Hoax: The Green Card Lottery and Family Fourth Preference Have No Connection To Terrorism on December 18, 2018 and Top 10 Most Viewed Posts On The Insightful Immigration Blog In 2017 on December 29, 2017.

Cyrus D. Mehta published *Matter of G- Inc: Clarifying the Role of the Function Manager Under the L-1Visa* with Sophia Genovese, Bender's Immigration Bulletin, Vo. 22, No. 24, December 15, 2017.

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