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

FEBRUARY 2018 IMMIGRATION UPDATE

Posted on February 2, 2018 by Cyrus Mehta

Headlines:

1. State of the Union Speech Outlines Immigration Reform Proposal; White House Releases 'Framework' on Immigration and Border Security – President Donald Trump outlined several immigration-related themes during his State of the Union address on January 30, 2018. Also, the Trump administration released its "Framework on Immigration Reform & Border Security" on January 25, 2018.
2. Immigration Innovation Act of 2018 Introduced in Senate – Sens. Orrin Hatch (R-Utah) and Jeff Flake (R-Ariz.) introduced the "Immigration Innovation (I-Squared) Act of 2018" in the U.S. Senate on January 25, 2018. The bill (S. 2344) would authorize additional visas for “well-educated aliens” to live and work in the United States.
3. USCIS Announces Termination of TPS Designation in 2019 for El Salvador – TPS for El Salvador will be terminated effective September 9, 2019. The 60-day re-registration period began January 18, 2018, and runs through March 19, 2018.
4. USCIS Automatically Extends EAD Validity for Certain Haitians With TPS; Re-Registration Period Now Open – The designation of Haiti for TPS will expire on July 22, 2019. Current beneficiaries of TPS under Haiti's designation who want to maintain that status through the program's termination date must re-register by March 19, 2018. USCIS has automatically extended the validity of EADs for certain individuals with TPS from Haiti.
5. DOJ Announces End to Use of Civil Enforcement Authority to Enforce Agency Guidance Documents – The Office of the Associate Attorney General announced a new policy on January 25, 2018, that prohibits the Department of Justice from using its civil enforcement authority to convert

agency guidance documents into binding rules.

6. USCIS Emailing Notifications to H-2A Petitioners, Using Pre-Paid Mailers to Send RFEs – USCIS has begun emailing notifications of receipt and approval to H-2A (temporary agricultural worker) petitioners who file Forms I-129, Petitions for a Nonimmigrant Worker. Also, USCIS said it is using pre-paid mailers provided by H-2A petitioners to send requests for evidence (RFE) if issued in a case.
7. DOL Issues Notice on Change for H-2B Labor Certification Period of Need – The DOL's Office of Foreign Labor Certification alerted employers and other interested stakeholders about a process change "to better assure fairness regarding the issuance of H-2B temporary labor certifications due to the unprecedented volume of applications received on January 1, 2018."
8. Dep't of State Updates Guidance on Affidavits of Support and Public Charge Determinations – The Department of State recently updated guidance on affidavits of support and public charge determinations.
9. USCIS Releases Guidance on L-1 Relationships and Proxy Votes – A recent policy memorandum from U.S. Citizenship and Immigration Services (USCIS) clarifies a 1982 precedent decision, *Matter of Hughes*, by instructing officers that proxy votes must be irrevocable from the time of filing the L-1 petition through adjudication to establish a qualifying relationship. The petitioner must file an amended petition if any changes of ownership and control of the organization occur after USCIS adjudicates the petition.
10. CBP Issues Guidance on Border Searches of Electronic Devices – CBP issued a memorandum providing guidance and standard operating procedures for border searches of electronic devices.
11. Federal Contractors With E-Verify FAR Requirement Must Enroll in E-Verify – **F**ederal contractors and subcontractors with an E-Verify Federal Acquisition Regulation (FAR) requirement must enroll in and use E-Verify.
12. ABIL Global: Mexico – This article provides commentary on "duty of care" in Mexico's corporate immigration system.
13. Firm In The News...

Details:

1. **State of the Union Speech Outlines Immigration Reform Proposal; White House Releases 'Framework' on Immigration and Border Security**

President Donald Trump outlined several immigration-related themes during his State of the Union address on January 30, 2018. Also, the Trump administration released its "Framework on Immigration Reform & Border Security" on January 25, 2018. Following are highlights of these communications.

State of the Union. President Trump called for "immigration policies that focus on the best interests of American workers and American families." He asserted that "for decades, open borders have allowed drugs and gangs to pour into our most vulnerable communities. They've allowed millions of low-wage workers to compete for jobs and wages against the poorest Americans. Most tragically, they have caused the loss of many innocent lives." He said he is "calling on Congress to finally close the deadly loopholes that have allowed MS-13, and other criminal gangs, to break into our country."

President Trump said that after meeting extensively with both Democrats and Republicans "to craft a bipartisan approach to immigration reform," his administration "presented Congress with a detailed proposal" that includes four pillars:

1. A path to citizenship for 1.8 million "illegal immigrants who were brought here by their parents at a young age." Under the plan, "those who meet education and work requirements, and show good moral character, will be able to become full citizens of the United States over a 12-year period."
2. Fully securing the border. "That means building a great wall on the southern border, and it means hiring more heroes...to keep our communities safe. Crucially, our plan closes the terrible loopholes exploited by criminals and terrorists to enter our country, and it finally ends the horrible and dangerous practice of catch and release."
3. Ending the diversity visa lottery. "It's time to begin moving toward a merit-based immigration system, one that admits people who are skilled, who want to work, who will contribute to our society, and who will love and respect our country."
4. Ending "chain migration" by limiting family migration to spouses and minor children.

President Trump also said he signed an order to keep the "detention facilities" open in Guantanamo Bay, Cuba.

Framework on Immigration Reform & Border Security. Among other things, the framework calls for a $25 billion "trust fund" for a border wall system, ports of entry/exit, and northern border enhancements. It also proposes providing legal status for Deferred Action for Childhood Arrivals (DACA) recipients, including a 10- to 12-year path to citizenship that includes "requirements for work, education and good moral character." The framework would eliminate the Diversity Visa lottery.

The next day, Kirstjen Nielsen, Secretary of Homeland Security, released a brief statement supporting President Trump's "security-focused immigration framework," including funding for the "border wall system, the ability to quickly remove those who break our immigration laws and reforms to our immigration system." Secretary Nielsen said, "This is what DHS front-line personnel have asked for to secure our borders and maintain the integrity of our immigration system."

The White House statement is at https://www.whitehouse.gov/briefings-statements/white-house-framework-immigration-reform-border-security/. DHS Secretary Nielsen's statement is at https://www.dhs.gov/news/2018/01/26/secretary-kirstjen-m-nielsen-statement-white-house-immigration-framework.

Back to Top

2. Immigration Innovation Act of 2018 Introduced in Senate

Sens. Orrin Hatch (R-Utah) and Jeff Flake (R-Ariz.) introduced the "Immigration Innovation (I-Squared) Act of 2018" in the U.S. Senate on January 25, 2018. The bill (S. 2344) would authorize additional visas for “well-educated aliens” to live and work in the United States.

A summary from Sen. Hatch outlines the bill as follows:

Employment-Based Nonimmigrant Visas (H–1B)

- *U.S. advanced degrees*: Uncaps the existing exemption (currently 20,000) for holders of U.S. master's degrees or higher from the annual numerical limitation on H–1B visas for individuals who are being sponsored for or who will be sponsored for a green card.
- *Statutory cap*: Increases the annual base allocation of H–1B visas from 65,000 to 85,000.

- *Market escalator*: Creates a market-based escalator to allow the supply of H–1B visas to meet demand. Under the escalator, up to 110,000 additional H–1B visas (for a total of 195,000) may be granted in a fiscal year if certain demand requirements are met.
- *Lottery prioritization*: Prioritizes adjudication of cap-subject H–1B visa petitions for holders of U.S. master's degrees or higher, holders of foreign Ph.D.'s, and holders of U.S. STEM (science, technology, engineering, and mathematics) bachelor's degrees.
- *Hoarding penalties*: Subjects employers who fail to employ an H–1B worker for more than 3 months during the individual's first year of work authorization to a penalty.
- *Prohibitions on replacement*: Prohibits employers from hiring an H–1B visa holder with the purpose and intent to replace a U.S. worker.
- *Work authorization for H–1B spouses and children*: Provides work authorization for spouses and dependent children of H–1B visa holders.
- *Worker mobility*: Increases H–1B worker mobility by establishing a grace period during which H–1B visa holders can change jobs without losing legal status.
- *Dependent employers*: Updates 1998 law exempting H–1B dependent employers from certain recruitment and nondisplacement requirements. Raises from $60,000 to $100,000 the H–1B salary level at which the salary-based exemption takes effect. Narrows education-based exemption to H–1B hires with a U.S. Ph.D. Eliminates exemptions for "super-dependent" employers.

Green Cards

- *Per-country numerical limits*: Eliminates annual per-country limit for employment-based permanent resident "green cards" and adjusts per-country caps for family-based green cards.
- *Green card recapture*: Enables the recapture of green card numbers that were approved by Congress in previous years but not used.
- *Exemptions from green card cap*: Exempts spouses and children of employment-based green card holders, holders of U.S. STEM master's degrees or higher, and certain individuals with extraordinary ability in the arts and sciences, from worldwide numerical caps on employment-based green cards.
- *Worker mobility*: Increases worker mobility for individuals on the path to a

green card by enabling them to change jobs earlier in the process without losing their place in the green card line.
- *Employment-based conditional green cards*: Creates a new conditional green card category to allow U.S. employers to sponsor university-educated foreign professionals through a separate path from H–1B.

Student Visas

- *Dual intent*: Enables F–1 student visa holders to seek permanent resident status while a student or during Optional Practical Training (OPT).

STEM Education and Worker Training

- *Promoting American Ingenuity Account*: Increases fees for H–1B visas and employment-based green cards and directs fees toward state-administered grants to promote STEM education and worker training.

Sen. Hatch's statement is at https://www.hatch.senate.gov/public/index.cfm/2018/1/hatch-flake-introduce-merit-based-high-skilled-immigration-bill-for-the-21st-century.

Back to Top

3. USCIS Announces Termination of TPS Designation in 2019 for El Salvador

The designation of El Salvador for temporary protected status (TPS) was set to expire on March 9, 2018. The Secretary of Homeland Security has determined that conditions in El Salvador no longer support its designation for TPS and that termination of the TPS designation of El Salvador is required. The Secretary therefore is terminating the designation effective September 9, 2019, which is 18 months following the end of the current designation. The 60-day re-registration period began January 18, 2018, and runs through March 19, 2018.

Nationals of El Salvador (and those having no nationality who last habitually resided in El Salvador) who have been granted TPS and wish to maintain their TPS and receive TPS-based employment authorization documents (EAD) valid through September 9, 2019, must re-register for TPS in accordance with the procedures set forth in the USCIS notice.

USCIS has automatically extended the validity of EADs with TPS from El Salvador with an original expiration date of March 9, 2018, and containing the

category code "A-12" or "C-19." The employee with such an EAD may continue to work without a new one (and without a receipt notice) through the end of the automatic extension period, September 5, 2018, USCIS said.

The notice is at https://www.gpo.gov/fdsys/pkg/FR-2018-01-18/pdf/2018-00885.pdf. A correction notice is at https://www.federalregister.gov/documents/2018/01/22/C1-2018-00885/termination-of-the-designation-of-el-salvador-for-temporary-protected-status.

Back to Top

4. USCIS Automatically Extends EAD Validity for Certain Haitians With TPS; Re-Registration Period Now Open

As announced in late 2017, the designation of Haiti for temporary protected status (TPS) will expire on July 22, 2019. Current beneficiaries of TPS under Haiti's designation who want to maintain that status through the program's termination date of July 22, 2019, must re-register by March 19, 2018. Also, USCIS has automatically extended the validity of employment authorization documents (EADs) for certain individuals with TPS from Haiti.

EADs for Haitians with TPS with an original expiration date of January 22, 2018, and containing the category code "A-12" or "C-19" are automatically extended and the employee may continue to work without a new one (and without a receipt notice) through the end of the automatic extension period, July 21, 2018.

Additionally, those Haitians with TPS who have an EAD with an expiration date of July 22, 2017, and who have not yet received the new EAD applied for during the last re-registration period are also covered by this automatic extension. For the Form I-9, these employees may show their EAD with a July 22, 2017, expiration date, their EAD application receipt (Notice of Action, Form I-797C) that notes the application was received on or after May 24, 2017, and USCIS's statement on this automatic extension at https://www.uscis.gov/news/re-registration-period-now-open-haitians-temporary-protected-status.

The re-registration notice is at https://www.uscis.gov/news/re-registration-period-now-open-haitians-temporary-protected-status. The notice of termination of TPS for Haitians is at

https://www.gpo.gov/fdsys/pkg/FR-2018-01-18/html/2018-00886.htm.

Back to Top

5. DOJ Announces End to Use of Civil Enforcement Authority to Enforce Agency Guidance Documents

As a follow-up to a memorandum issued by Attorney General Jeff Sessions in November 2017, the Office of the Associate Attorney General announced a new policy on January 25, 2018, that prohibits the Department of Justice from using its civil enforcement authority to convert agency guidance documents into binding rules. Under the DOJ's new policy, agency civil litigators are prohibited from using guidance documents, or noncompliance with guidance documents, to establish violations of law in affirmative civil enforcement actions.

The November memo prohibits the DOJ from issuing guidance documents that have the effect of adopting new regulatory requirements or amendments to the law that are binding on persons or entities outside the Executive Branch. The memo prevents the agency "from evading required rulemaking processes by using guidance memos to create de facto regulations. In the past, the Department of Justice and other agencies had blurred the distinction between regulations and guidance documents," a DOJ announcement said.

"Although guidance documents can be helpful in educating the public about already existing law, they do not have the binding force or effect of law and should not be used as a substitute for rulemaking," Associate Attorney General Rachel Brand said.

The announcement is at https://www.justice.gov/opa/pr/associate-attorney-general-brand-announces-end-use-civil-enforcement-authority-enforce-agency. The November memo is at https://www.justice.gov/opa/press-release/file/1012271/download.

Back to Top

6. USCIS Emailing Notifications to H-2A Petitioners, Using Pre-Paid Mailers to Send RFEs

As of January 22, 2018, U.S. Citizenship and Immigration Services (USCIS) has begun emailing notifications of receipt and approval to H-2A (temporary agricultural worker) petitioners who file Forms I-129, Petitions for a Nonimmigrant Worker. Also, USCIS said it is using pre-paid mailers provided by

H-2A petitioners to send requests for evidence (RFE) if issued in a case.

These process changes apply only to H-2A petitions "due to their highly time-sensitive nature," USCIS said.

Email notifications. USCIS will send notifications of receipt and approval to the email address provided by H-2A petitioners in Part 1 of Form I-129 and to any email address provided for their attorneys or accredited representatives on a valid Form G-28. There is no charge for this service.

In addition to these emailed notifications, USCIS will continue to send receipt and approval notices by postal mail and update Case Status Online at https://egov.uscis.gov/casestatus/landing.do.

Pre-paid mailers for RFEs. H-2A petitioners can submit two pre-paid mailers if they want to expedite delivery of both the final decision notice and any RFE issued for the petition.

Service centers normally use pre-paid mailers only for final decision notices. Any pre-paid mailers submitted for H-2A petitions must meet the same requirements (see link below) as pre-paid mailers used for other forms and classifications.

USCIS will no longer send receipt notices to H-2A petitioners via pre-paid mailer. This is because the emailed receipt notice will include the relevant receipt number, the agency said.

The USCIS notice is at https://www.uscis.gov/news/alerts/uscis-will-email-notifications-h-2a-petitioners-use-pre-paid-mailers-send-requests-evidence. Requirements for pre-paid mailers are at https://www.uscis.gov/news/alerts/clarification-uscis-customers-can-select-delivery-service-receive-certain-documents.

Back to Top

7. DOL Issues Notice on Change for H-2B Labor Certification Period of Need

The Department of Labor's (DOL) Office of Foreign Labor Certification (OFLC) alerted employers and other interested stakeholders on January 17, 2018, about a process change "to better assure fairness regarding the issuance of H-2B temporary labor certifications due to the unprecedented volume of

applications received on January 1, 2018."

Among other things, the alert notes that H-2B employers receiving Notices of Acceptance can proceed to meet the additional regulatory requirements, including recruitment of U.S. workers and submission of recruitment reports. Employers receiving Notices of Deficiency that are corrected, and who then receive a Notice of Acceptance, can also proceed to meet the additional regulatory requirements.

The alert states that OFLC is making a change to its process regarding the issuance of final labor certification decisions. This process change "will better reflect the sequential order in which employers filed applications," the alert notes. OFLC will not begin releasing certified H-2B applications (Form ETA-9142B, *Application for Temporary Employment Certification)* until February 20, 2018. On that day, OFLC will release certified H-2B applications that have met all regulatory requirements as of that day *in sequential order based on the original calendar day and time the application was filed (i.e., receipt time).* Thereafter, OFLC will continue to release certified H-2B applications in a sequential manner until all applications are released. OFLC will continue to issue rejections, withdrawals, and denials of labor certification applications in accordance with standard procedures. This process change "will allow employers who filed promptly on January 1, 2018, sufficient time to meet regulatory requirements, including the recruitment and hiring of qualified and available U.S. workers, thus preserving the sequential order of filing that took place on January 1, 2018, to the extent possible," the alert states.

The alert is at https://www.foreignlaborcert.doleta.gov/news.cfm (scroll down to January 17, 2018).

Back to Top

8. Dep't of State Updates Guidance on Affidavits of Support and Public Charge Determinations

The Department of State recently updated guidance on affidavits of support and public charge determinations:

UNCLASSIFIED 18 STATE 942
January 4, 2018
From: SECSTATE WASHDC

Subject: Update to 9 FAM 302.8 Public Charge - INA 212(A)(4)

2. Guidance at 9 FAM 302.8 has been updated and reorganized.

3. INA 212(a)(4)(B) continues to provide that officers must take into account the totality of the alien's circumstances at the time of visa application, including, at a minimum: (a) age, (b) health, (c) family status, (d) assets, resources, financial status, and (e) education and skills. As revised, 9 FAM 302.8-2(B)(2) now includes detailed guidance to help officers assess these statutory factors when considering the totality of the applicant's circumstances. For instance, 9 FAM 302.8-2(B)(2)(f)(1)(b)(i) provides that an officer may consider "past or current receipt of public assistance of any type" in determining whether an applicant is likely to become a public charge, although officers must make a determination based on the present circumstances. Consequently, an applicant's current receipt of public assistance may not raise significant future concerns, based on the totality of circumstances. For example, if the applicant just completed an educational degree and received a credible job offer, the applicant's education and skills might provide a sufficient basis to find that the applicant overcomes any public charge ineligibility concerns in spite of current lack of assets. Alternatively, an applicant's past receipt of public assistance could be very significant: for example, if the applicant's spouse was the family's primary income earner, but recently died. In this case, the applicant's recent change in family status and likely change in financial status would weigh heavily in considering the totality of the circumstances.

4. Additionally, 9 FAM 302.8-2(B)(3), paragraph b, as revised provides that a "properly filed and sufficient, non-fraudulent" Affidavit of Support by itself may not satisfy the INA 212(a)(4) public charge requirement. The Affidavit of Support requirement at INA 213A and the public charge ineligibility at INA 212(a)(4) are distinct requirements which, where both are applicable, must both be satisfied. Accordingly, a properly filed and sufficient Affidavit of Support is essential, but does not preclude denial on public charge grounds. Officers should consider such affidavits as one factor in the totality of the applicant's circumstances, and, may find the applicant is likely to become a public charge if, for example, the applicant is in very poor health, is unable to work, and is likely to incur significant medical costs. Similarly, if an applicant does not clearly overcome public charge

concerns but could with a joint sponsor, then a consular officer's evaluation of the likelihood the joint sponsor would voluntarily meet his or her financial obligations toward the applicant becomes vital to the adjudication. See 9 FAM 302.8-2(B)(3)(b)(1)(b).

5. The updated guidance at 9 FAM 302.8 is effective immediately.

Back to Top

9. USCIS Releases Guidance on L-1 Relationships and Proxy Votes

A recent policy memorandum from U.S. Citizenship and Immigration Services (USCIS) clarifies a 1982 precedent decision*, Matter of Hughes*, by instructing officers that proxy votes must be irrevocable from the time of filing the L-1 petition through adjudication to establish a qualifying relationship. The petitioner must file an amended petition if any changes of ownership and control of the organization occur after USCIS adjudicates the petition.

The memo notes that although *Matter of Hughes* focused on joint venture scenarios, issues of ownership and control can arise in other circumstances. Specifically, owners of entities often use proxy votes to determine control of the entity. In typical proxy voting cases, a person is authorized to vote equity owned by another. Neither *Matter of Hughes* nor previous USCIS guidance have addressed whether proxy votes must be irrevocable to establish control, the memo states.

The fact that proxies may be revoked is an issue when establishing control of a company through proxy votes, the memo notes. A petitioner can show control by submitting documentation demonstrating that one or more equity holders irrevocably granted the ability to vote their equity to another equity holder, thereby effectively (and legally) giving the other equity holder "control" over the company or companies in question. The memo notes that such documentation may include relevant evidence regarding the legal framework under which the proxy was granted (such as the laws of the jurisdiction in which the entity is organized and the jurisdiction in which any agreements were executed), the organizational documents of the entity, irrevocable proxy agreements, official meeting minutes detailing the irrevocable proxy, and an affidavit from the proxy-granting equity holder with sufficient specificity regarding the details of the irrevocable proxy. As always, the memo states, the petitioner bears the burden of proof and the evidence the petitioner provides must be credible and sufficient for the adjudicator to determine eligibility. "If a petitioner cannot

demonstrate the requisite common ownership and control from the time of filing through the time USCIS adjudicates the petition, it fails to establish a qualifying relationship," the memo states. "Further, changes of ownership and control of the organization post-adjudication may constitute a substantial change in circumstances or new material information requiring re-adjudication by USCIS to ensure compliance with the regulations. In such cases, the petitioner must file an amended L-1 petition."

The memo is at https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2017/2017-12-29-PM-602-0155-L-1-Qualifying-Relationships-and-Proxy-Votes.pdf.

Back to Top

10. CBP Issues Guidance on Border Searches of Electronic Devices

U.S. Customs and Border Protection (CBP) issued a memorandum on January 4, 2018, providing guidance and standard operating procedures for border searches of electronic devices. The guidance applies to "searching, reviewing, retaining, and sharing information contained in computers, tablets, removable media, disks, drives, tapes, mobile phones, cameras, music and other media players, and any other communication, electronic, or digital devices subject to inbound and outbound border searches" by CBP.

Among other things, the memo states that border searches of electronic devices may include searches of the information stored on a device when it is presented for inspection or during its detention by CBP for an inbound or outbound border inspection. The border search will include "an examination of only the information that is resident upon the device and accessible through the device's operating system or through other software, tools, or applications. Officers may not intentionally use the device to access information that is solely stored remotely." The memo includes procedures for handling material identified as protected by attorney-client privilege or attorney work product, and other sensitive information such as medical records, journalist work, and business or commercial information.

The memo states that if presented with an electronic device containing information that is protected by a passcode or encryption or other security mechanism, a CBP officer may request and retain passcodes or other means of access as needed to facilitate the examination of an electronic device or

information contained on an electronic device, including information on the device that is accessible through software applications present on the device that is being inspected or has been detained, seized, or retained in accordance with the memo.

Passcodes and other means of access obtained during the course of a border inspection "will only be utilized to facilitate the inspection of devices" and information subject to border search "will be deleted or destroyed when no longer needed to facilitate the search of a given device, and may not be utilized to access information that is only stored remotely," the memo states. If an officer is unable to complete an inspection of an electronic device because it is protected by a passcode or encryption, the officer may "detain the device pending a determination as to its admissibility, exclusion, or other disposition," the memo notes.

The memo is at https://www.cbp.gov/sites/default/files/assets/documents/2018-Jan/CBP-Directive-3340-049A-Border-Search-of-Electronic-Media-Compliant.pdf.

Back to Top

11. Federal Contractors With E-Verify FAR Requirement Must Enroll in E-Verify

U.S. Citizenship and Immigration Services issued a reminder that as of January 5, 2018, federal contractors and subcontractors with an E-Verify Federal Acquisition Regulation (FAR) requirement must enroll in and use E-Verify. Beginning January 5, 2018, new federal contractors and subcontractors with a FAR requirement must provide their Data Universal Numbering System (DUNS) during the E-Verify enrollment process. The DUNS Number is a unique, nine-digit identification number assigned by Dun and Bradstreet to the organizations maintained in its database. Existing E-Verify employers designated as federal contractors with a FAR requirement do not have to provide their DUNS number, but will be prompted to enter it in E-Verify when they update their company profile.

More information on E-Verify is at https://www.uscis.gov/e-verify and https://www.uscis.gov/e-verify/enroll-e-verify. An E-Verify enrollment checklist is at https://www.uscis.gov/e-verify/getting-started/enrollment-checklist. A video on how to enroll in E-Verify is at

https://www.uscis.gov/e-verify/video-how-enroll-e-verify-1. Contact information for E-Verify is at https://www.uscis.gov/e-verify/customer-support/contact-e-verify.

Back to Top

12. ABIL Global: Mexico

This article provides commentary on "duty of care" in Mexico's corporate immigration system.

On a global scale, the immigration regimes of every country evolve according to diverse reasons. It is often hard to keep track due to the fast pace at which the financial and political climate may transform. In the case of Mexico, a major reform took place in 2012 after a longstanding regime that lasted nearly 40 years, and yet there is no legislation that specifically addresses the concept of "duty of care," despite growing concerns among practitioners and employers.

From a regulatory standpoint, the Mexican immigration regime is governed by the Constitution, the Migration Act, and its regulations, along with several decrees, programs, and guidelines for the practical application of the law. All of these instruments are aligned with core objectives as established in the National Development Plan and the Strategic Plan of the National Immigration Institute 2013-2018, which are heavily oriented toward the protection of the human rights of migrants, fostering economic growth through facilitating legal migratory flows, promoting family reunion, and encouraging foreign direct investment.

In light of the above, illegal immigration was decriminalized and the term “illegal” was removed from a regulatory standpoint, the immigration procedures were streamlined, and the sanctions for non-compliance of foreigners in the country have been relaxed.

Within this context, such flexibilities are ironically deceiving. It is common to find employers and foreign nationals continuing to be penalized with administrative sanctions, monetary fines, and other difficulties that may interrupt business continuity and compromise a foreign national's legal stay in the country. In addition, provisions in other areas of law, including tax and labor regulations, must be observed to ensure that foreign nationals working and doing business in the country remain fully compliant and avoid such risks.

There is a challenge to guarantee that the concept of "duty of care" not only remains in the vocabulary of law practitioners and employers but also is included in the regulations and the culture of all corporations that mobilize foreign employees internationally.

Although the Instituto Nacional de Migración (INM) does not directly penalize companies for foreign employees' non-compliance with immigration laws, employers acting as sponsors are held accountable and the implications may indirectly affect business objectives. Furthermore, sanctions imposed on expatriates also permeate companies' records with the INM and may affect future applications when the same company is acting as the sponsor.

Although duty of care is not a concept that Mexican laws specifically address, its practice is widespread within corporations and international assignees. Hence, the potential contingencies it may entail must be considered by corporations in defining their global immigration programs, even in countries such as Mexico, that could be deemed with a low risk and relaxed regulations for corporate and business activities.

Back to Top

13. Firm In the News

Cyrus D. Mehta was a Guest Speaker on the topic: *How To Help Clients Even While President Trump Is Restricting Immigration, at the* AILA Philadelphia Chapter Meeting, Philadelphia, PA, January 18, 2018.

Cyrus D. Mehta published Potential Adjustment of Status Options After the Termination of TPS on January 22, 2018; and The American Dream Is For Everyone with **Sophia Genovese** on January 29, 2018.

David Isaacson published What Comes Next: Potential Relief Options After the Termination of TPS on January 17, 2018.

Back to Top