



MID-FEBRUARY 2018 IMMIGRATION UPDATE

Posted on February 20, 2018 by Cyrus Mehta

Headlines:

1. [Immigration Bills Fail in Senate, Including DACA; House Bill's Prospects Appear Dim; Second Court Enjoins DACA Rescission](#) – Four immigration bills failed in the U.S. Senate, and a House bill appears doomed. Also, a second court enjoined DACA rescission, with a nationwide preliminary injunction while lawsuits proceed. The decision included certain limitations.
2. [President Trump Calls for Establishment of National Vetting Center](#) – President Donald Trump signed a National Security Presidential Memorandum to establish a National Vetting Center "to coordinate the efforts of departments and agencies to better identify individuals seeking to enter the country who present a threat to national security, border security, homeland security, or public safety."
3. [Coalition of Business Leaders Tells Trump: We Support International Entrepreneur Rule](#) – A coalition of business leaders, investors, and organizations sent a letter on February 8, 2018, to President Donald Trump in support of the International Entrepreneur Rule (IER), which is in effect following a court order. The Trump administration has signaled that the IER is likely on the chopping block. The letter says that killing the IER "would upend the ability of talented immigrant entrepreneurs to launch new enterprises and employ American workers in communities across the United States."
4. [Surge in H-2B Petitions Possible for Second Half of FY 2018, USCIS Announces](#) – Following the Department of Labor's recent announcement that it will not begin releasing H-2B temporary labor certifications until February 20, 2018, due to an unprecedented number of applications, USCIS announced that it may receive more H-2B nonimmigrant petitions

than there are H-2B visas available in the second half of fiscal year 2018, and will take a "flexible" approach.

5. [Alleged P-3 Entertainer Visa Fraud Scheme Busted](#) – The P-3 visa allows entertainers to visit the United States to perform in culturally unique events and deepen U.S. understanding of different cultures. An indictment alleged that defendants choreographed a widespread P-3 visa fraud scheme by dressing visa applicants in traditional dance costumes and creating fake concert flyers.
6. [USCIS To Process Recently Filed Asylum Applications Over Older Ones](#) – USCIS will schedule asylum interviews for recent applications ahead of older filings, in an attempt to stem the growth of the agency's asylum backlog.
7. [USCIS, DOS Tighten Screening Procedures for Refugees and Family Members](#) – USCIS and DOS implemented new procedures "to ensure that all individuals admitted as refugees receive similar, thorough vetting—whether they are principal refugees, accompanying family members, or following-to-join refugees."
8. **Firm In the News...**

Details:

1. Immigration Bills Fail in Senate, Including DACA; House Bill's Prospects Appear Dim; Second Court Enjoins DACA Rescission

A bipartisan deal on immigration, the so-called "Common Sense Plan," failed on February 15, 2018, in the U.S. Senate, 54-45. The legislation would have provided a pathway to legalization for Deferred Action for Childhood Arrivals (DACA) "Dreamers" and provided \$25 billion for border security measures, among other things. Reportedly, the Trump administration opposed the deal and had threatened to veto it despite substantial bipartisan support. A White House-supported bill also failed in the Senate, 39-60. The latter bill would have cut family immigration, ended the diversity visa (DV) program, and increased federal removal powers. Two other immigration proposals also failed on February 15.

Sen. John Thune was quoted as saying, "Well, we'll go back to the drawing board." Sen. Susan Collins (R-Maine) said she was "very disappointed" and added that "we've got real problems that we need to solve."

Meanwhile, the U.S. House of Representatives is hard at work on a tough

bill—the "Securing America's Future Act," also dubbed the "Goodlatte bill" after its main author, Rep. Bob Goodlatte (R-Va.), the chairman of the House Judiciary Committee—that appears not to have sufficient support in either the House or the Senate. Among other things, the bill would provide temporary, renewable legal status to DACA recipients rather than citizenship. It would authorize border wall funding, end family-based immigration, end the DV program, and require employers to use the E-Verify program, among other measures.

Also, on February 13, 2018, the U.S. District Court for the Eastern District of New York became the second court to enjoin DACA rescission, with a nationwide preliminary injunction while lawsuits proceed. The court ordered the Trump administration to maintain the DACA program on the same terms and conditions that existed before promulgation of the DACA Rescission Memo, subject to several limitations: the administration need not consider new applications by individuals who have never before obtained DACA benefits; need not continue granting advance parole to DACA beneficiaries; and may adjudicate DACA renewal requests on a case-by-case basis.

The court decision is at

<https://www.nilc.org/wp-content/uploads/2018/02/Batalla-Vidal-v-Nielsen-updated-pi-order-2018-02-13.pdf>. A Department of Homeland Security press release issued before the Senate voted on the "Common Sense Plan" is at

<https://www.dhs.gov/news/2018/02/15/schumer-rounds-collins-destroys-ability-dhs-enforce-immigration-laws-creating-mass>.

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2. President Trump Calls for Establishment of National Vetting Center

On February 6, 2018, President Donald Trump signed a National Security Presidential Memorandum to establish a National Vetting Center (NVC) "to coordinate the efforts of departments and agencies to better identify individuals seeking to enter the country who present a threat to national security, border security, homeland security, or public safety."

A statement issued by the White House said the NVC, to be led by the Department of Homeland Security, "will help fulfill the President's requirement that departments and agencies improve their coordination and use of intelligence and other information in the vetting process."

The statement says:

The Federal Government's current vetting efforts are ad hoc, which impedes our ability to keep up with today's threats. The NVC will better coordinate these activities in a central location, enabling officials to further leverage critical intelligence and law enforcement information to identify terrorists, criminals, and other nefarious actors trying to enter and remain within our country. The NVC's operations will adhere to America's strong protections for individuals' privacy, civil rights, and civil liberties. The Administration's top priority is the safety and security of the public, and the NVC will empower our frontline defenders to better fulfil that obligation.

The statement is at

<https://www.whitehouse.gov/briefings-statements/statement-press-secretary-regarding-creation-national-vetting-center/>.

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3. Coalition of Business Leaders Tells Trump: We Support International Entrepreneur Rule

A coalition of business leaders, investors, and organizations sent a letter on February 8, 2018, to President Donald Trump in support of the International Entrepreneur Rule (IER), which is in effect following a court order. The Trump administration has signaled that the IER is likely on the chopping block. The letter says that killing the IER "would upend the ability of talented immigrant entrepreneurs to launch new enterprises and employ American workers in communities across the United States."

Among other things, the letter notes that "Rescission of the International Entrepreneur Rule" has been pending review with the Office of Management and Budget since November 17, 2017. "This potential new rule places a dark cloud over IER, as immigrant entrepreneurs are uncertain of how long IER will be in place," the letter notes:

The rescission rule stifles investment into new companies with foreign-born founders, which ultimately costs the U.S. economy. It also exacerbates an alarming trend of elite entrepreneurs launching successful startups *outside* the United States. Twenty years ago our country's share of global venture investment was 90%, but that number has dropped precipitously to 81% in 2006 and to 53% in 2017. In 2016, China was home to six of the ten largest venture capital investments in the world. If we continue to push

entrepreneurs overseas, our share of global investment will continue to decrease.

As background, on January 17, 2017, the Department of Homeland Security (DHS) published the International Entrepreneur final rule with an original effective date of July 17, 2017. On July 11, 2017, DHS published a final rule delaying the effective date until March 14, 2018, to allow for a full review of the rule. The Trump administration proposed in late 2017 to rescind the final rule. In December 2017, a federal court ruled in *National Venture Capital Association v. Duke* that the rule should go into effect because the government had not provided sufficient notice-and-comment for the delay rule under the Administrative Procedure Act.

The full text of the coalition letter is at

<http://technet.org/press-release/technet-renews-call-for-president-to-preserve-international-entrepreneur-rule>. TechNet, with 77 member companies, sent a

similar letter to U.S. Citizenship and Immigration Services, available at

<https://technetorg.app.box.com/s/q9t2kd9y7nr9vj4qbi7zs8ow93g2qept>. The

court's decision is at

<https://www.courthousenews.com/wp-content/uploads/2017/12/Venture-Capital-ruling.pdf>. A USCIS statement following the court order is at

<https://www.uscis.gov/news/news-releases/uscis-begin-accepting-applications-under-international-entrepreneur-rule>. Information on how to submit an

international entrepreneur application is at

<https://www.uscis.gov/humanitarian/humanitarian-parole/international-entrepreneur-parole>.

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4. Surge in H-2B Petitions Possible for Second Half of FY 2018, USCIS Announces

Following the Department of Labor's recent announcement that it will not begin releasing H-2B temporary labor certifications until February 20, 2018, due to an unprecedented number of applications, U.S. Citizenship and Immigration Services (USCIS) announced that it may receive more H-2B nonimmigrant petitions than there are H-2B visas available in the second half of fiscal year 2018.

USCIS said it is "maintaining a flexible approach to this issue," which may

include randomly selecting petitions received on the final receipt date "to ensure that we allocate H-2B visas fairly and do not exceed the cap." USCIS said more information would be forthcoming.

The USCIS announcement is at

<https://www.uscis.gov/news/alerts/surge-h-2b-petitions-possible-second-half-fy-2018>. Information on the cap count for H-2B nonimmigrants is at <https://www.uscis.gov/working-united-states/temporary-workers/h-2b-non-agricultural-workers/cap-count-h-2b-nonimmigrants>.

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5. Alleged P-3 Entertainer Visa Fraud Scheme Busted

A 15-count indictment was unsealed on February 8, 2018, in federal court in Brooklyn, New York, charging Stella Boyadjian, Hrachya Atoyan, and Diana Grigoryan, also known as "Dina Akopovna," for their roles in a multi-year visa fraud scheme that brought Armenian citizens into the United States for profit. The defendants are charged with multiple counts of visa fraud and with conspiring to defraud the United States, commit visa fraud, and illegally bring undocumented persons into the United States. Boyadjian and Grigoryan are also charged with related money laundering, and Boyadjian is charged with aggravated identity theft.

As alleged in the indictment, the defendants choreographed their widespread visa fraud scheme by dressing visa applicants in traditional dance costumes and creating fake concert flyers to deceive a government program that allows foreign nationals to temporarily enter the United States as artistic performers in the P-3 visa category. That category allows entertainers to visit the U.S. to perform in culturally unique events and to deepen U.S. understanding of different cultures.

Boyadjian allegedly ran a nonprofit organization called Big Apple Music Awards Foundation Inc. (BAMA), based in Rego Park, New York, which she and her co-conspirators used to further their visa fraud scheme. As part of the alleged scheme, the defendants and their co-conspirators solicited undocumented persons and charged them fees ranging from \$3,000 to \$15,000 per applicant to fraudulently obtain P-3 visas by submitting false Forms I-129 and supporting documents to U.S. Citizenship and Immigration Services. Upon approval of the I-129 petitions, the defendants and their co-conspirators acquired fraudulent

dance certificates and organized staged photo sessions where foreign nationals wore Armenian dance costumes to make it appear as though they were traditional Armenian musicians, singers, and performers. After being trained how to falsely answer questions during visa interviews, the P-3 visa applicants presented these fake certificates and photos during their P-3 visa interviews. Once in the United States, some beneficiaries of the P-3 visas paid the defendants an additional fee to be included in applications for extensions of their fraudulently obtained visas. The defendants furthered their visa fraud scheme by creating flyers and other documents purporting to hold BAMA-sponsored concerts and events in the United States.

USCIS' announcement is at

<https://www.uscis.gov/news/news-releases/three-individuals-indicted-visa-fraud-scheme-profit>.

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6. USCIS To Process Recently Filed Asylum Applications Over Older Ones

U.S. Citizenship and Immigration Services (USCIS) announced recently that the agency will schedule asylum interviews for recent applications ahead of older filings, in an attempt to stem the growth of the agency's asylum backlog. The agency said it faces a "crisis-level backlog" of 311,000 pending asylum cases as of January 21, 2018, making the asylum system "increasingly vulnerable to fraud and abuse. This backlog has grown by more than 1750 percent over the last five years, and the rate of new asylum applications has more than tripled."

To address this issue, USCIS said it will follow these priorities when scheduling affirmative asylum interviews:

1. Applications that were scheduled for an interview but the interview had to be rescheduled at the applicant's request or the needs of USCIS;
2. Applications pending 21 days or fewer since filing; and
3. All other pending applications, starting with newer filings and working back toward older filings.

Additionally, the Affirmative Asylum Bulletin issued by USCIS has been discontinued.

USCIS said this priority approach was used for 20 years until 2014, and "seeks to deter those who might try to use the existing backlog as a means to obtain

employment authorization." Returning to a "last in, first out" interview schedule will allow USCIS "to identify frivolous, fraudulent or otherwise non-meritorious asylum claims earlier and place those individuals into removal proceedings," USCIS said.

The USCIS announcement is at

<https://www.uscis.gov/news/news-releases/uscis-take-action-address-asylum-backlog>. Information on affirmative asylum interview scheduling is at

<https://www.uscis.gov/humanitarian/refugees-asylum/asylum/affirmative-asylum-interview-scheduling>.

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7. USCIS, DOS Tighten Screening Procedures for Refugees and Family Members

On February 1, 2018, U.S. Citizenship and Immigration Services (USCIS) and the Department of State implemented new procedures "to ensure that all individuals admitted as refugees receive similar, thorough vetting—whether they are principal refugees, accompanying family members, or following-to-join refugees." A following-to-join refugee is the spouse or child of a principal refugee who lives abroad and wishes to join the principal refugee in the United States.

These measures were implemented following a 120-day review mandated by Executive Order 13780, which directed the Department of Homeland Security to determine what additional procedures should be implemented to ensure that individuals seeking admission as refugees do not pose a threat to the security and welfare of the United States.

According to USCIS, new measures that apply to following-to-join refugees processed overseas include:

- Ensuring that following-to-join refugees receive the full baseline interagency screening and vetting checks that other refugees receive.
- Requesting that the following-to-join refugee submit his or her Form I-590, Registration for Classification as Refugee, in support of the principal refugee's Form I-730, Refugee/Asylee Relative Petition, earlier in the adjudication process. USCIS or the Department of State will contact petitioners directly to request this information.
- Vetting certain nationals or stateless persons against classified databases.

The USCIS notice is at

<https://www.uscis.gov/news/alerts/uscis-strengthening-screening-family-members-abroad-seeking-join-refugees-united-states>. A related Department of State memorandum is at

https://www.dhs.gov/sites/default/files/publications/17_1023_S1_Refugee-Admissions-Program.pdf. A report required by Executive Order 13780 is at

<https://www.justice.gov/opa/press-release/file/1026436/download>.

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8. **Firm In The News**

Cyrus D. Mehta was the Program Chair, *Asylum, Special Immigrant Juvenile Status, Crime Victim, and Other Related Relief*, Practicing Law Institute, New York, NY and via Webcast, February 9, 2018.

Cyrus D. Mehta was the Program Chair and Speaker, *Basic Immigration Law 2018*, Practicing Law Institute, New York, NY and via Webcast, February 8, 2018.

Cyrus D. Mehta was a Moderator, *Lessons Across Borders: What the U.S. and Canada Can Teach One Another About Establishing a Successful Immigration and Asylum Policy*, American Bar Association 2018 Midyear Meeting, Vancouver, February 3, 2018.

Cyrus D. Mehta was a Speaker, *Ten Changes President Trump Has Made Without Immigration Legislation*, teleconference (with Greg Siskind) sponsored by the Alliance of Business Immigration Lawyers, January 25, 2018.

Cyrus D. Mehta published [The AAO Finds That Entry Level Wages Do Not Automatically Preclude H-1B Visa Classification](#) along with Sophia Genovese on February 6, 2018.

Cyrus D. Mehta published [The Evolving Rights Of Deportable Immigrants As Seen In The Case Of Ravi Ragbir](#) along with Sophia Genovese on February 12, 2018.