



## MARCH 2018 IMMIGRATION UPDATE

*Posted on March 1, 2018 by Cyrus Mehta*

### Headlines:

1. [Supreme Court Declines Trump Administration Appeal in DACA Case](#) – The U.S. Supreme Court let stand without comment a ruling by a federal judge to block the Trump administration's plan to end Deferred Action for Childhood Arrivals by March 5, 2018.
2. [Supreme Court Says Certain Aliens May Be Held in Indefinite Detention, Remands Case to Ninth Circuit](#) – The U.S. Supreme Court remanded a case to the U.S. Court of Appeals for the Ninth Circuit that challenges the government's authority to hold an alien in detention indefinitely without a bond hearing. The Court said that certain aliens may be held in detention indefinitely while proceedings are pending, and that periodic bond hearings are not required. Justice Breyer dissented in strong terms.
3. [USCIS Clarifies Policy on Requirements for Third-Party Worksite H-1B Petitions](#) – USCIS has published a policy memorandum clarifying that USCIS may request detailed documentation to ensure that a legitimate employer-employee relationship is maintained while an employee is working at a third-party worksite.
4. [USCIS Expands Credit Card Payment Option for Fees](#) – The new payment option is available for the 41 fee-based forms processed at USCIS Lockbox facilities.
5. [State Dept. Discusses Visa Availability in the Coming Months](#) – The Department of State's Visa Bulletin for March 2018 discusses visa availability in the coming months in several categories.
6. [USCIS Revises Mission Statement, Removes "Nation of Immigrants"](#) – USCIS has revised its mission statement to remove the terms "nation of immigrants" and "customers," among other changes.
7. [USCIS Finalizes Guidance on Signature Requirements; Power-of-Attorney](#)

[Signatures Will No Longer Be Accepted](#) – USCIS announced on February 16, 2018, that petitioners and applicants who seek immigration benefits must provide a valid signature on forms submitted to the agency, and that power-of-attorney signatures will no longer be accepted in most cases.

8. [ABIL Global: Turkey](#) – The Telecommunications Authority has created a new registration system for Turkish companies to file applications and receive official government communications electronically.
9. **Firm In The News...**

## **Details:**

### **1. Supreme Court Declines Trump Administration Appeal in DACA Case**

On February 26, 2018, the U.S. Supreme Court blocked the Trump administration's attempt to bypass the U.S. Court of Appeals for the Ninth Circuit and let stand without comment a ruling by a federal judge in California on January 9, 2018, to end Deferred Action for Childhood Arrivals (DACA) by March 5, 2018. This means that the Trump administration must continue to accept renewal applications for the time being from those enrolled in DACA. The case is expected to be considered next by the Ninth Circuit.

The Supreme Court said, "It is assumed the court of appeals will act expeditiously to decide this case." It could take another year for the case to wind its way back to the Supreme Court. Congressional legislation is also a possibility, although current prospects for such action seem dim.

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### **2. Supreme Court Says Certain Aliens May Be Held in Indefinite Detention, Remands Case to Ninth Circuit**

On February 27, 2018, the U.S. Supreme Court remanded a case to the U.S. Court of Appeals for the Ninth Circuit that challenges the government's authority to hold an alien in detention indefinitely without a bond hearing. The Court said that certain aliens may be held in detention indefinitely while proceedings are pending, and that periodic bond hearings are not required. In this case, the Supreme Court was asked to interpret several provisions of U.S. immigration law that authorize the government to detain aliens in the course of immigration proceedings.

The Court said that because the Ninth Circuit "erroneously concluded that

periodic bond hearings are required under the immigration provisions at issue here, it had no occasion to consider respondents' constitutional arguments on their merits. Consistent with our role as 'a court of review, not of first view,' ... we do not reach those arguments. Instead, we remand the case to the Court of Appeals to consider them in the first instance." The Court also noted several additional issues for the Ninth Circuit to address, such as whether respondents could continue litigating their claims as a class and whether the Court of Appeals continues to have jurisdiction.

The Court observed that all parties appeared to agree that the text of the provisions at issue, when read most naturally, did not give detained aliens the right to periodic bond hearings during the course of their detention. "But by relying on the constitutional avoidance canon of statutory interpretation, the Court of Appeals for the Ninth Circuit held that detained aliens have a statutory right to periodic bond hearings under the provisions at issue," the Court noted, concluding that "immigration officials are authorized to detain certain aliens in the course of immigration proceedings while they determine whether those aliens may be lawfully present in the country."

Justice Breyer dissented, saying he would find it alarming "to believe that Congress wrote these statutory words in order to put thousands of individuals at risk of lengthy confinement all within the United States but all without hope of bail. I would read the statutory words as consistent with, indeed as requiring protection of, the basic right to seek bail." He said, among other things, that given the "serious constitutional problem" of prolonged detention of noncitizens, he "would interpret the statutory provisions before us as authorizing bail." He referred to the Declaration of Independence, which states that all have certain rights, among them the right to liberty, and that the Constitution's Due Process Clause "protects each person's liberty from arbitrary deprivation." He also noted that for a long time, "liberty has included the right of a confined person to seek release on bail." Justice Breyer said, "No one can claim, nor since the time of slavery has anyone to my knowledge successfully claimed, that persons held within the United States are totally without constitutional protection."

The Supreme Court's opinion is at

[https://www.supremecourt.gov/opinions/17pdf/15-1204\\_f29g.pdf](https://www.supremecourt.gov/opinions/17pdf/15-1204_f29g.pdf).

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### **3. USCIS Clarifies Policy on Requirements for Third-Party Worksite H-1B Petitions**

U.S. Citizenship and Immigration Services (USCIS) has published a policy memorandum clarifying that USCIS may request detailed documentation to ensure that a legitimate employer-employee relationship is maintained while an employee is working at a third-party worksite.

USCIS said this clarifies existing regulatory requirements relating to H-1B petitions filed for workers who will be employed at one or more third-party worksites. "This policy memorandum makes clear that employers must provide contracts and itineraries for employees who will work at a third-party location," USCIS said. The guidance explains that for an H-1B petition involving a third-party worksite to be approved, the petitioner must show by a preponderance of evidence that, among other things:

- The beneficiary will be employed in a specialty occupation; and
- The employer will maintain an employer-employee relationship with the beneficiary for the duration of the requested validity period.

When H-1B beneficiaries are placed at third-party worksites, petitioners must demonstrate that they have specific and non-speculative qualifying assignments in a specialty occupation for that beneficiary for the entire time requested on the petition, the guidance states. While an H-1B petition may be approved for up to three years, USCIS will, in its discretion, generally limit the approval period to the length of time demonstrated that the beneficiary will be placed in non-speculative work and during which the petitioner will maintain the requisite employer-employee relationship.

USCIS said the updated policy guidance aligns with President Trump's "Buy American and Hire American" Executive Order and directive to protect the interests of U.S. workers.

Reaction. Some immigration attorneys have noted that the new policy suggests that additional evidence may be needed in addition to contracts and work orders, such as more details in the work orders or in letters from the end client regarding the beneficiary's work assignment. It appears that employers will need to provide more evidence to establish that the H-1B worker will be performing qualified duties under the H-1B program at the end client. If USCIS does not have evidence that this is the case, it could either deny the H-1B

petition or grant it for less than three years. According to reports, requests for evidence in response to H-1B visa applications were up 45% (a total of 85,265 requests) in January to August 2017 over the same time period a year earlier.

The USCIS policy memorandum is at <http://bit.ly/2BMRVt3>. A related announcement is at

<https://www.uscis.gov/news/news-releases/uscis-strengthens-protections-combat-h-1b-abuses>.

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#### **4. USCIS Expands Credit Card Payment Option for Fees**

U.S. Citizenship and Immigration Services (USCIS) announced that it will now accept credit card payments for filing most of its forms.

The new payment option is available for the 41 fee-based forms processed at USCIS Lockbox facilities. To pay by Visa, MasterCard, American Express or Discover, applicants will need to Form G-1450, Authorization for Credit Card Transaction. USCIS will enter credit card data into the Pay.gov system, operated by the U.S. Department of the Treasury, and will then destroy the Form G-1450 to protect the credit card information.

Applicants for naturalization and those renewing or replacing their permanent resident cards (green cards) can already use a credit card when they file online at the USCIS website. In addition, USCIS has been accepting credit card payments for naturalization forms filed at Lockbox facilities since 2015.

The USCIS announcement is at

<https://www.uscis.gov/news/news-releases/uscis-expands-credit-card-payment-option-fees>. Links to the 41 fee-based forms affected by this announcement are at <https://www.uscis.gov/forms/forms-processed-uscis-lockbox-facilities>.

Lockbox information is at

<https://www.uscis.gov/about-us/directorates-and-program-offices/lockbox-intake/office-intake-and-document-production>. Pay.gov is at

<https://pay.gov/public/home>. The G-1450 is at

<https://www.uscis.gov/sites/default/files/files/form/g-1450.pdf>.

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#### **5. State Dept. Discusses Visa Availability in the Coming Months**

The Department of State's Visa Bulletin for March 2018 discusses visa

availability in the coming months in several categories.

Special Immigrant Translator category. Given the limited availability of visa numbers and the existing demand, the Department said it expects to reach the FY 2018 annual limit of 50 Special Immigrant Visas in the SI category early this year. As a result, it has been necessary to maintain a March Final Action Date of April 22, 2012. It is likely that number use will require the SI category to become Unavailable in the coming months. Once the annual limit of 50 visas is reached, further issuances in the SI category will not be possible until October 2018, under the FY 2019 annual limit. The SQ Special Immigrant Visa category for certain Iraqi and Afghan nationals employed by or on behalf of the U.S. government in Iraq or Afghanistan is not affected and remains Current.

Vietnam Employment Fifth Preference category. Continued heavy applicant demand is expected to result in the Vietnam Employment Fifth preference category reaching the per-country annual limit during March, the Department said. Once this happens, the category will become subject to a final action date, and visa availability for the remainder of FY 2018 will depend on the extent to which otherwise unused numbers are available.

Employment Fourth Preference Certain Religious Workers category. Pursuant to the continuing resolution, signed on February 9, 2018, the non-minister special immigrant program expires on March 23, 2018. No SR visas may be issued overseas, or final action taken on adjustment of status cases, after midnight March 22, 2018, the Department noted. Visas issued before this date will have a validity date of March 22, 2018, and all individuals seeking admission as non-minister special immigrants must be admitted into the United States by midnight March 22, 2018. If there is no legislative action extending this category for FY 2018, the final action date would immediately become Unavailable for March for all countries, the Department said.

Employment Fifth Preference categories (I5 and R5). The continuing resolution signed on February 9, 2018, extended this immigrant investor pilot program until March 23, 2018. The I5 and R5 visas may be issued until the close of business on March 23, 2018, and may be issued for the full validity period, the Department said. No I5 or R5 visas may be issued overseas, or final action taken on adjustment of status cases, after March 23, 2018. If there is no legislative action extending this category for FY 2018, the final action date would immediately become Unavailable for March for all countries, the

Department said.

The March 2018 Visa Bulletin is at

<https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2018/visa-bulletin-for-march-2018.html>.

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## **6. USCIS Revises Mission Statement, Removes "Nation of Immigrants"**

In what may be a sign of the times, U.S. Citizenship and Immigration Services (USCIS) has revised its mission statement to remove the term "nation of immigrants," among other changes.

USCIS Director Francis Cissna announced the new mission statement on February 22, 2018. He emphasized the principles of "upholding the rule of law and ensuring the integrity of our immigration system." He singled out deletion of the word "customers," which, he said, "promotes an institutional culture that emphasizes the ultimate satisfaction of applicants and petitioners, rather than the correct adjudication of such applications and petitions according to the law. Use of the term leads to the erroneous belief that applicants and petitioners, rather than the American people, are whom we ultimately serve. All applicants and petitioners should, of course, always be treated with the greatest respect and courtesy, but we can't forget that we serve the American people."

The new mission statement says:

U.S. Citizenship and Immigration Services administers the nation's lawful immigration system, safeguarding its integrity and promise by efficiently and fairly adjudicating requests for immigration benefits while protecting Americans, securing the homeland, and honoring our values.

The former mission statement said:

USCIS secures America's promise as a nation of immigrants by providing accurate and useful information to our customers, granting immigration and citizenship benefits, promoting an awareness and understanding of citizenship, and ensuring the integrity of our immigration system.

The new USCIS mission statement is at <https://www.uscis.gov/aboutus>. USCIS Director Cissna's related statement is at

<https://www.uscis.gov/news/news-releases/uscis-director-l-francis-cissna-new-a-gency-mission-statement>.



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## **7. USCIS Finalizes Guidance on Signature Requirements; Power-of-Attorney Signatures Will No Longer Be Accepted**

U.S. Citizenship and Immigration Services (USCIS) announced on February 16, 2018, that petitioners and applicants who seek immigration benefits must provide a valid signature on forms submitted to the agency, and that power-of-attorney signatures will no longer be accepted in most cases. If forms are filed by a corporation or other legal entity, they must be signed by an authorized person. The new policy is effective March 18, 2018.

A related final policy memorandum has updated an interim memorandum that outlined the elements of a valid signature and permitted entities that filed petitions with USCIS to use the signature of an individual based on a power of attorney. Because of concerns about consistency and program integrity, USCIS reversed the interim memorandum's policy on power-of-attorney signatures.

The prohibition on power-of-attorney signatures does not affect signatures on behalf of individuals younger than age 14 or those with disabilities. The final memorandum makes additional changes, such as providing that an authorized signatory must be employed by the petitioner and that USCIS may reject a form submitted with a faulty signature instead of offering the opportunity to fix the deficiency.

USCIS said it will publish revised instructions for individual forms to clearly specify the applicable signature requirements. USCIS will also address requirements for electronic signatures in future guidance.

The announcement is at

<https://www.uscis.gov/news/news-releases/uscis-finalizes-guidance-signature-requirements>. The final policy memorandum is at

<https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-02-16-PM-602-0134.1-Signatures-on-Paper-Applications-Petitions-Requests-and-Other-Documents.pdf>.

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## **8. ABIL Global: Turkey**

*The Telecommunications Authority has created a new registration system for Turkish companies to file applications and receive official government communications*



*electronically.*

Various Turkish government ministries are reminding companies that the Telecommunications Authority has created a new registration system for Turkish companies to receive official government communications and notices electronically. This is called the KEP system (*kayıtlı elektronik posta*). Under the new system, no work permit applications can be logged in without a company-sponsored utilization of its KEP account.

The Information, Communication and Technologies Authority of Turkey (under the Ministry of Transportation, Maritime Affairs and Communication) will ask companies and individuals who sponsor work permits to register for this KEP system. The system presumably will then electronically verify filings, approvals, cancellations, and requests for evidence.

Many visitors have had urgent questions regarding this abrupt change. Several officers confirmed that the new application system is just now operational, so few applicants have been able to log in a new application so far. It appears that the initial delay was an integration problem that has been resolved. The government decided to keep the old system activated to allow cases already filed to continue to process. Therefore, for those cases in process, documents may still be uploaded, cases canceled, and approvals received via the old system.

In the meantime, the system appears to work in this manner:

1. The company purchases a KEP account via a registered notary or the Turkish postal system
2. The company designates a specific individual to act as contact
3. The designee receives an activation memory stick for an "electronic notification tool" from the agency to load onto the company's system
4. The company (or authorized attorney) logs in a work permit application
5. All subsequent related filings and communications presumably will be carried out through the KEP system

The website for this system is at <https://www.turkkep.com.tr/>. How helpful or complicated the KEP system will be remains to be seen. There are still significant unknowns.

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## 9. Firm In The News

**Cora-Ann V. Pestaina** published [BALCA Holds That Foreign Language Requirement Did Not Need To Be Listed In The Advertisements](#) on February 20, 2018

**David Isaacson** published [Rodriguez Tovar v. Sessions: The Ninth Circuit Holds That a Child Sponsored By a Lawful Permanent Resident Should Not Be Penalized For The LPR Parent's Naturalization](#) on February 27, 2018.

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