



MAY 2018 IMMIGRATION UPDATE

Posted on May 1, 2018 by damirazhanatova

Headlines:

[USCIS Plans to Revise Definition of Specialty Occupation, Employment, Employer-Employee Relationship, Among Other Actions](#) – The letter does not specify how these definitions will be revised or when the proposed regulations will be issued.

[Gorsuch Votes Against Trump Administration in Deportation Case; DHS, ICE Issue Statements](#) – U.S. Supreme Court Justice Neil Gorsuch voted with the Democrat-appointed justices in a 5-4 decision in *Sessions v. Dimaya* holding that a federal law permitting the removal of foreigners guilty of a "crime of violence" is unconstitutionally vague.

[Justice Dept. Settles Immigration-Related Discrimination Claim Against Texas Company](#) – The investigation, initiated based on a worker's complaint, revealed that Themesoft engaged in citizenship status discrimination against an asylee by refusing to process his application because he was not a lawful permanent resident, U.S. citizen, or H-1B visa holder. DOJ noted that asylees have permanent work authorization.

[USCIS Announces Convictions in Two Immigration Fraud Cases](#) – USCIS recently announced convictions in two cases related to immigration fraud.

[ABIL Global](#) – *Turkey is requiring companies to have online governmental communications accounts to file work permits.*

Firm in the News...

Details:

USCIS Plans to Revise Definition of Specialty Occupation, Employment, Employer-Employee Relationship, Among Other Actions

On April 4, 2018, L. Francis Cissna, Director of U.S. Citizenship and Immigration Services (USCIS), sent a letter to Sen. Charles Grassley (R-Iowa), Chairman of the Senate Committee on the Judiciary discussing the agency's review of existing regulations, policies, and programs and its development of "a combination of rulemaking, policy memoranda, and operational changes to implement the 'Buy American and Hire American' Executive Order." Mr. Cissna said that, among other things, USCIS plans to propose regulations to revise the definition of specialty occupation "to increase focus on obtaining the best and the brightest foreign nationals via the H-1B program," and to revise the definitions of employment and employer-employee relationship "to better protect U.S. workers and wages." In addition, he said DHS will propose "additional requirements designed to ensure employers pay appropriate wages to H-1B visa holders." The letter does not specify how these definitions will be revised or when the proposed regulations will be issued.

The letter also confirms USCIS' plans to propose regulatory changes to remove H-4 dependent spouses from the class of aliens eligible for employment authorization.

Mr. Cissna confirmed that USCIS is also drafting a proposed rule to remove the International Entrepreneur Rule, noting that the rule is currently in effect. He said USCIS has not approved "any parole requests under the International Entrepreneur Rule at this time."

The USCIS letter is at

<https://www.judiciary.senate.gov/imo/media/doc/2018-04-04%20USCIS%20to%20CEG%20-%20Buy%20America,%20Hire%20America%20update.pdf>.

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Gorsuch Votes Against Trump Administration in Deportation Case; DHS, ICE Issue Statements

U.S. Supreme Court Justice Neil Gorsuch voted with the Democrat-appointed justices in a 5-4 decision in *Sessions v. Dimaya* holding that a federal law permitting the removal of foreigners guilty of a "crime of violence" is unconstitutionally vague. Among other things, the Court noted that the

"ordinary case" of a crime of violence is an excessively speculative thing, and that uncertainty about the level of risk that makes a crime "violent" is fatal. The case involved a permanent resident convicted of the crime of burglary.

Justice Gorsuch concurred in part and concurred in the judgment. Among other things, he agreed with the majority that the Immigration and Nationality Act provision at hand was unconstitutionally vague. He said that in the criminal context, the law generally must afford ordinary people fair notice of the conduct it punishes, and that it was hard to see how the Due Process Clause of the U.S. Constitution might require any less than that in the civil context. With respect to the vagueness of the law in question, he said, "Vague laws invite arbitrary power." Justice Gorsuch also noted, "The law's silence leaves judges to their intuitions and the people to their fate. In my judgment, the Constitution demands more." He said he was persuaded that the "void for vagueness" doctrine "serves as a faithful expression of ancient due process and separation of powers principles the framers recognized as vital to ordered liberty under our Constitution."

Tyler Q. Houlton, Department of Homeland Security (DHS) Press Secretary, said the decision "significantly undermines DHS's efforts to remove aliens convicted of certain violent crimes," and that it "allows our nation to be a safe haven for criminals and makes us more vulnerable." Tom Homan, U.S. Immigration and Customs Enforcement (ICE) Deputy Director, said he was "disappointed" by the decision. "As a law enforcement agency, ICE will certainly abide by this decision," he said, but "it will have an adverse impact on our ability to establish that aliens convicted of certain violent crimes...are removable from the United States and ineligible for certain immigration benefits." He said it was "yet another example of the need for Congress to urgently close the loopholes that allow criminal aliens to avoid removal and remain in the United States."

The Supreme Court's opinion is at

https://www.supremecourt.gov/opinions/17pdf/15-1498_1b8e.pdf. The DHS

Press Secretary's statement is at

<https://www.dhs.gov/news/2018/04/17/dhs-press-secretary-statement-sessions-v-dimaya>. The ICE Deputy Director's statement is at

<https://www.ice.gov/news/releases/ice-deputy-director-statement-sessions-v-dimaya>.

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Justice Dept. Settles Immigration-Related Discrimination Claim Against Texas Company

The Department of Justice (DOJ) announced on April 20, 2018, that it reached a settlement with Themesoft, Inc., a Texas-based company that provides consulting and staffing services to technology clients. The settlement resolves DOJ's investigation into whether the company discriminated against a work-authorized immigrant by refusing to allow him to continue in the hiring process.

The investigation, initiated based on a worker's complaint, revealed that Themesoft engaged in citizenship status discrimination against an asylee by refusing to process his application because he was not a lawful permanent resident, U.S. citizen, or H-1B visa holder. DOJ noted that asylees have permanent work authorization, like U.S. citizens, U.S. nationals, refugees, and lawful permanent residents, so employers are generally prohibited from discriminating against them based on their citizenship status. The investigation also revealed that Themesoft requested specific immigration documentation from the worker because of his citizenship or immigration status, even though the INA's antidiscrimination provision prohibits such conduct.

Under the settlement agreement, Themesoft will pay civil penalties for the alleged citizenship status discrimination and the unfair documentary practices. Themesoft will also post notices informing workers about their rights under the INA's antidiscrimination provision, train its staff, and be subject to departmental monitoring and reporting requirements for three years. During the investigation, Themesoft agreed to pay the worker back pay and offered him a job. The Department's agreement requires Themesoft to timely pay the worker the remainder of the \$12,000 in back pay it still owes him.

"Employers must not engage in unlawful discrimination against asylees," said Acting Assistant Attorney General John Gore of the Civil Rights Division. "This settlement serves as a reminder that companies that refer workers to third-party clients should be mindful of their non-discrimination obligations."

The settlement agreement is at

<https://www.justice.gov/opa/press-release/file/1055111/download>. The DOJ press release is at

<https://www.justice.gov/opa/pr/justice-department-settles-immigration-related-discrimination-claim-against-texas-company>.

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USCIS Announces Convictions in Two Immigration Fraud Cases

U.S. Citizenship and Immigration Services (USCIS) recently announced convictions in two cases related to immigration fraud.

On April 18, 2018, Jessica Godoy Ramos of Lynwood, California, was sentenced for stealing the identity of a New York attorney and filing immigration petitions on behalf of foreign nationals who believed she was a legitimate lawyer, USCIS announced. Ramos was sentenced to 15 months in federal prison. Upon completion of the prison term, she will spend six months in home detention. Calling the crimes "despicable," presiding U.S. District Judge Dolly M. Gee also ordered Ramos to pay \$29,693 in restitution to 16 identified victims.

According to USCIS, Ms. Ramos accepted tens of thousands of dollars from dozens of people who sought her services in an attempt to obtain legal status in the United States. Using the name of the New York attorney, Ms. Ramos filed immigration petitions on behalf of some of the people, but in other cases, she never performed any services. Ms. Ramos also created counterfeit immigration parole documents to make it appear that she had successfully represented her clients.

According to court documents, Ms. Ramos' clients initially believed she was a legitimate immigration attorney, but several became suspicious when she directed them to appear at USCIS offices for interviews but they did not have any scheduled appointments.

Sentencing in the second case took place on April 19, 2018. That case involved the owner of four schools, Hee Sun Shim of Hancock Park, California. Mr. Shim enrolled hundreds of foreign nationals to fraudulently obtain immigration documents, which allowed them to remain in the United States as "students" even though they rarely, if ever, attended classes. He was sentenced to 15 months in federal prison and ordered to forfeit more than \$450,000.

Mr. Shim, along with two co-defendants, ran a "pay-to-stay" scheme through three schools in Koreatown: Prodee University/Neo-America Language School; Walter Jay M.D. Institute, an Educational Center; and the American College of Forensic Studies. A fourth school in Alhambra, Likie Fashion and Technology College, was also involved in the scheme, which ran for at least five years, USCIS

said.

USCIS attributed the convictions to the "considerable efforts of the Los Angeles Fraud Detection and National Security (FDNS) unit. Los Angeles FDNS immigration officers worked closely with law enforcement and intelligence community partners to resolve potential fraud, national security and public safety concerns, and to ensure exchange of current and comprehensive information."

The USCIS announcement is at <https://bit.ly/2JhUyDU>.

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ABIL Global: Turkey

Turkey is requiring companies to have online governmental communications accounts to file work permits.

Several years ago, Turkey created an online registration system for receiving official government communications and notices electronically. The Information, Communication and Technologies Authority of Turkey (under the Ministry of Transportation, Maritime Affairs and Communication) created the online communication system for private companies and individuals to receive official notices from various government agencies, called the KEP system (*kayıtlı elektronik posta*).

The Ministry of Labor (MOL) recently announced that companies and individuals who sponsor work permits must register and use the KEP system. MOL will use the system to electronically handle filings, approvals, cancellations, or Requests for Further Evidence.

KEP Registration Generally

All companies in Turkey (with certain exceptions regarding Liaison Offices) must be registered for the KEP system. A KEP account can be purchased by each company through one of the eight entities designated by the Information, Communication and Technologies Authority (link below). The company then designates a specific individual to act as contact, who is the company's relevant Social Security (SS) e-notification authority ("designee"). The designee must then obtain an electronic activation tool in the form of a memory stick from the agency to load onto the company's system.

KEP Registration for MOL/Turkish Work Permits

To initiate the KEP system for work permits, the designee must complete the Company's MOL registration through the online system at <https://ecalismaizni.csgb.gov.tr/#/eizin>. This requires uploading several company documents to confirm signature authority and shareholder structure. After that is completed, the designee may then delegate authority to a law firm or other agency to represent the company for work permits.

Problems with the KEP System

The use of the KEP account has not been universally welcomed. One point of contention involves the lack of flexibility with regard to whom the company selects as the designee and e-signature memory-stick holder. This is because the KEP system for MOL requires that an e-signature be given to the person designated by a company to be the SS contact. Since many larger companies have third parties designated to be the SS contact (a payroll service provider, for example), reluctance to give that same third party an e-signature for the company is not surprising. Hopefully, the MOL and KEP managers may be able to increase flexibility or change the system to address this business concern.

For further information, see

<https://www.btk.gov.tr/tr-TR/Sayfalar/KEP-Kayitli-Elektronik-Posta-Hizmet-Saglayicilar>.

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Firm In The News

Cyrus Mehta was quoted in the *Times of India* regarding H-1B lobbying: <https://timesofindia.indiatimes.com/business/india-business/tcs-infy-hike-lobbying-spends-in-us/articleshow/63903881.cms>.

Mr. Mehta was a guest on the Brian Lehrer show, "Brian Talks New York." The topic was "Trump vs. New York: Immigration Update." The video and a description are at <http://tv.cuny.edu/show/briantalksnny/PR2007128>.

Mr. Mehta recently spoke at the following conferences:

- Panelist, *DHS/DOS/CIS Ombudsman*, 2018 Immigration Law Conference,

New Jersey Institute of Continuing Legal Education, Newark, NJ, April 18, 2018

- Panelist, *Battlefield tactics to successfully obtain nonimmigrant visas in the current environment: NIV's, L-1B's, RFE's, H-1Bs, T N's and OMG's*, AILA Texas, Oklahoma & New Mexico Chapter Spring Conference, April 20, 2018, San Antonio, TX

Cyrus Mehta was quoted in "There's still some hope for H4 visa holders in US. Here's why", published by *The Economic Times* at

<https://economictimes.indiatimes.com/nri/working-abroad/theres-still-some-hope-for-h4-visa-holders-in-us-heres-why/articleshow/63954039.cms>

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