



## AUGUST 2018 IMMIGRATION UPDATE

*Posted on August 2, 2018 by Cyrus Mehta*

### Headlines:

#### [State Dept. Announces Oversubscription of August Employment-Based Preference Categories, Limits on Special Immigrant Translator Visa Availability](#)

– The Department of State's Visa Bulletin for the month of August 2018 includes announcements about employment visa availability.

#### [USCIS Postpones Implementation of Memorandum on Notices to Appear](#) –

USCIS announced that issuance of operational guidance is pending for its recent memorandum on notices to appear; therefore, implementation of the memorandum is postponed until the operational guidance is issued.

#### [New Law Extends CNMI CW-1 Program, Mandates New Fraud Fee, Will Require E-Verify Participation](#)

– CW-1 employers must pay a mandatory \$50 "fraud prevention and detection" fee with each petition, in addition to other current fees.

#### [CBP Announces Inspection Changes for CW Visa Holders Arriving in Guam](#)

– CNMI-Only Transitional Worker (CW) visa holders may be admitted in Guam when in transit to the Northern Mariana Islands.

#### [DHS Extends TPS Designation for Somalia for 18 Months](#)

– DHS has extended the temporary protected status designation for Somalia through March 17, 2020, due to "ongoing armed conflict and extraordinary and temporary conditions."

#### [Office of Foreign Labor Certification Releases Foreign Labor Recruiter List](#)

– OFLC said that providing the list enables the agency to "be in a better position to enforce recruitment violations, and workers will be better protected against fraudulent recruiting schemes, because they will be able to verify whether a

recruiter is in fact recruiting for legitimate H-2B job opportunities in the United States."

**[ICE Announces Arrests, Charges in New York, Boston](#)** – ICE arrested 65 people for violating U.S. immigration laws during a five-day period ending July 20, 2018, in New York City and on Long Island. In Boston, 25 people were charged as a result of an ICE probe targeting document and benefit fraud.

**[Trump Threatens Immigration-Related Shutdown Ahead of Midterm Elections](#)** – According to reports, Republicans are concerned that this may mean President Trump intends to veto any spending bill that doesn't include everything he wants, passed by Congress to continue government functions past the end of September, when the government runs out of money.

**[United Kingdom](#)** – What now for the Windrush Generation?

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### **State Dept. Announces Oversubscription of August Employment-Based Preference Categories, Limits on Special Immigrant Translator Visa Availability**

The Department of State's Visa Bulletin for the month of August 2018 includes the following announcement:

#### OVERSUBSCRIPTION OF AUGUST EMPLOYMENT-BASED PREFERENCE CATEGORIES

WORLDWIDE, EL SALVADOR, GUATEMALA, HONDURAS, MEXICO, AND PHILIPPINES EMPLOYMENT-BASED FIRST (E1) PREFERENCE: As readers were advised in item F of the July Visa Bulletin, there continues to be an extremely high rate of demand for E1 numbers, primarily for USCIS adjustment of status applicants. Therefore, pursuant to the Immigration and Nationality Act, it has been necessary to impose an E1 Final Action Date for the month of August, with this date being imposed immediately. This action will allow the Department to hold worldwide number use within the maximum allowed under the FY-2018 annual limits.

INDIA Employment-based Fourth (E4) AND Certain Religious Workers (SR)

preference categories: There has been extremely high demand in these preference categories. Pursuant to the Immigration and Nationality Act, it has been necessary to impose E4 and SR Final Action Dates for India, which has reached its per-country limit. This action will allow the Department to hold worldwide number use within the maximum allowed under the FY-2018 annual limits.

The implementation of the above mentioned dates will only be temporary, with the dates returning to Current status for October, the first month of fiscal year 2019.

The bulletin also includes this update on special immigrant translator visa availability:

Given the limited availability of visa numbers and the existing demand, the Department 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 an August Final Action Date of April 22, 2012. 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.

The bulletin for August 2018 is at

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

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### **USCIS Postpones Implementation of Memorandum on Notices to Appear**

U.S. Citizenship and Immigration Services (USCIS) announced on July 30, 2018, that issuance of operational guidance is pending for its recent memorandum on notices to appear (NTAs); therefore the implementation of the memorandum is postponed until the operational guidance is issued.

Policy Memorandum 602-0050.1, "Updated Guidance for the Referral of Cases and Issuances of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens," was issued on June 28, 2018, and instructed USCIS components to create or update operational guidance on NTAs and Referrals to ICE, to be issued within 30 days of the Policy Memorandum.

The announcement is at

<https://www.uscis.gov/news/alerts/updated-guidance-implementation-notice-a-appear-policy-memorandum>.

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### **New Law Extends CNMI CW-1 Program, Mandates New Fraud Fee, Will Require E-Verify Participation**

On July 24, 2018, President Trump signed the Northern Mariana Islands U.S. Workforce Act of 2018 (H.R. 5956), extending the Commonwealth of the Northern Mariana Islands (CNMI)-Only Transitional Worker program (CW-1 program) through 2029 and increasing the CW-1 cap for fiscal year (FY) 2019. The CW-1 program allows employers within the CNMI to apply for permission to employ foreign (nonimmigrant) workers who are otherwise ineligible to work in the CNMI under other nonimmigrant worker categories.

CW-1 employers must pay a mandatory \$50 "fraud prevention and detection" fee with each petition, in addition to other current fees. USCIS said it will reject any petition received after July 24, 2018, that includes incorrect or insufficient fees. This new fraud prevention and detection fee does not apply to CW petitions already filed and pending with USCIS as of July 24, 2018.

The Workforce Act will require CNMI employers seeking CW-1 workers to enroll in E-Verify and comply with the requirements of the E-Verify program. Although E-Verify enrollment is not currently required, it will soon be a requirement for all employers filing for CW-1 visas. U.S. Citizenship and Immigration Services (USCIS) said it "strongly encourages CNMI employers to enroll in the E-Verify program as soon as possible."

The Workforce Act raises the CW-1 cap for FY 2019 from 4,999 to 13,000, and provides new CW-1 caps for subsequent fiscal years. After announcing on April 11, 2018, that it had received CW-1 petitions for more than the number of visas previously available for FY 2019, USCIS will now resume accepting CW-1 petitions. Employers whose petitions were previously rejected because the cap was reached must file a new petition if they want CW workers to be considered under the increased cap. USCIS said it did not retain and cannot reopen previously rejected petitions.

In addition to extending the CW-1 program, the Workforce Act extends the following Consolidated Natural Resources Act of 2008 provisions until

December 31, 2019:

- The exemption from national caps for H-1B and H-2B workers in the CNMI and on Guam;
- The bar on asylum applications in the CNMI; and
- The CNMI-Only Nonimmigrant Investor (E-2C) program.

USCIS said the Department of Homeland Security (DHS) is exercising its discretion, as provided in the Act, to delay implementation of other changes to the CW program affecting

CW-1 filers until DHS issues an interim final rule. As of July 24, 2018, USCIS will only accept the May 9, 2018, version of Form I-129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker. USCIS will reject and return fees for any petitions submitted using a December 11, 2017, or earlier version date of Form I-129CW.

The USCIS notice is at

<https://www.uscis.gov/news/alerts/new-law-extends-cnmi-cw-1-program-mandates-new-fraud-fee-and-will-require-e-verify-participation>. The new law is at <https://www.congress.gov/bill/115th-congress/house-bill/5956?q=%7B%22search%22%3A%5B%22HR+5956%22%5D%7D&r=1>.

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### **CBP Announces Inspection Changes for CW Visa Holders Arriving in Guam**

U.S. Customs and Border Patrol (CBP) has announced that under the Northern Mariana Islands U.S. Workforce Act of 2018, effective immediately, CNMI-Only Transitional Worker (CW) visa holders may be admitted in Guam when in transit to the Commonwealth of the Northern Mariana Islands (CNMI). A CW nonimmigrant visa is valid for admission to Guam for the purpose of transit only.

The CW visa classification allows employers in the CNMI to apply for permission to employ foreign (nonimmigrant) workers who are otherwise ineligible to work under other nonimmigrant worker categories. Individuals approved for CW status who travel outside of the CNMI must obtain a CW nonimmigrant visa from the U.S. embassy or consulate in their country of citizenship to apply for readmission to the CNMI and retain their CW status.

The CBP announcement is at

<https://www.cbp.gov/newsroom/national-media-release/cbp-announces-inspection-changes-cw-visa-holders-arriving-guam>.

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### **DHS Extends TPS Designation for Somalia for 18 Months**

The Department of Homeland Security (DHS) has extended the temporary protected status (TPS) designation for Somalia for 18 months, through March 17, 2020, due to "ongoing armed conflict and extraordinary and temporary conditions."

Individuals from Somalia with TPS will be eligible to re-register for an extension of their status through March 17, 2020. Before the conclusion of the 18-month extension, DHS Secretary Kirstjen Nielsen will review conditions in Somalia to determine whether its TPS designation should be extended again or terminated.

DHS said there are approximately 500 Yemeni TPS beneficiaries. This 18-month extension of Somalia's designation for TPS permits current Somali TPS beneficiaries to re-register for TPS and remain in the United States with work authorization through March 17, 2020. To be eligible for TPS under Somalia's current designation, along with meeting the other eligibility requirements, such individuals must have continuously resided in the United States since May 1, 2012, and have been continuously physically present in the United States since September 18, 2012.

The announcement is at

<https://www.dhs.gov/news/2018/07/19/secretary-homeland-security-kirstjen-m-nielsen-announcement-temporary-protected>. Further details about this extension for TPS, including information about the re-registration process and employment authorization documents, will appear in a Federal Register notice.

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### **Office of Foreign Labor Certification Releases Foreign Labor Recruiter List**

The Department of Labor's Office of Foreign Labor Certification (OFLC) has published a list of foreign labor recruiters. OFLC said that providing the list enables the agency to "be in a better position to enforce recruitment violations, and workers will be better protected against fraudulent recruiting schemes, because they will be able to verify whether a recruiter is in fact recruiting for

legitimate H-2B job opportunities in the United States." OFLC said workers may use the partial case number(s) associated with a recruiter on the list to identify the particular job order(s) in OFLC's Electronic Job Registry, available in the iCERT system (<https://icert.doleta.gov/>), for which the recruiter is seeking workers.

The Department said it compiles this data from disclosures employers and their attorneys or agents made in conjunction with filing a Form ETA-9142B, H-2B Application for Temporary Employment Certification, about the foreign labor recruiters they engage, or plan to engage, in the recruitment of H-2B workers.

The Department noted that it does not endorse or vouch for any foreign labor agent or recruiter included in the Foreign Labor Recruiter List, nor does inclusion on the list signify that the recruiter is in compliance with the H-2B program.

The announcement and list are at

[https://www.foreignlaborcert.doleta.gov/Foreign\\_Labor\\_Recruiter\\_List.cfm](https://www.foreignlaborcert.doleta.gov/Foreign_Labor_Recruiter_List.cfm).

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### **ICE Announces Arrests, Charges in New York, Boston**

Officers from U.S. Immigration and Customs Enforcement's (ICE) Enforcement and Removal Operations (ERO) arrested 65 people during a five-day period ending July 20, 2018, in New York City and on Long Island. In Boston, 25 people were charged as a result of an ICE Homeland Security Investigations (HSI) probe targeting document and benefit fraud.

During the New York operation, ERO arrested 65 individuals for violating U.S. immigration laws. The arrestees include nationals from Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Jamaica, Mexico, and Ukraine. ERO deportation officers made arrests in the Bronx, Brooklyn, Queens, Manhattan, Staten Island, Nassau County, and Suffolk County.

Charges filed in Boston included a wide range of crimes, from aggravated identity theft to theft of public funds and others. The arrests and charges announced were a result of "Operation Double Trouble," a long-term, coordinated investigation by HIS's Document and Benefit Fraud Task Force (DBFTF) comprising local, state, and federal agencies "joining together to detect, deter and disrupt organizations and individuals involved in a wide range of

document, identity and benefit fraud schemes," ICE said.

ICE's New York announcement is at

<https://www.ice.gov/news/releases/ice-arrests-65-during-operation-cross-check-new-york-city-and-long-island>. ICE's Boston announcement is at

<https://www.ice.gov/news/releases/ice-hsi-boston-attorney-general-announce-25-arrests-large-scale-document-and-benefit>.

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## **Trump Threatens Immigration-Related Shutdown Ahead of Midterm Elections**

On July 29, 2018, President Donald Trump tweeted:

I would be willing to "shut down" government if the Democrats do not give us the votes for Border Security, which includes the Wall! Must get rid of Lottery, Catch & Release etc. and finally go to system of Immigration based on MERIT! We need great people coming into our Country!

With respect to funding a wall along the border with Mexico, which President Trump previously promised Mexico would pay for, in May President Trump said, "we're going to get the wall, even if we have to think about closing up the country for a while." He signed a spending bill in late March without everything he wanted in it but said, "I will never sign another bill like this again."

As of press time, there were no further specifics. According to reports, Republicans are concerned that this may mean President Trump intends to veto any spending bill that doesn't include everything he wants, including bills passed by Congress to continue government functions past the end of September, when the government runs out of money. Some in Congress hope to avoid drama before the midterm elections in November.

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## **United Kingdom**

*What now for the Windrush Generation?*

The United Kingdom (UK) government's "hostile environment" policy was introduced in 2014 with the intention of identifying migrants in the UK without immigration permission with the ultimate purpose of removing those deemed to be without lawful status from the UK. This was achieved by restricting access



to employment, housing, and vital public services such as health care, as well as detaining individuals who could not provide evidence of their immigration status. Unfortunately, it had a wider impact on those who were lawfully in the UK but had not previously been required to hold documentary evidence. One such group was the "Windrush Generation"—Commonwealth citizens who arrived in the UK before 1973 and who were given indefinite permission to reside in the UK by virtue of the Immigration Act 1971. Many came from the Caribbean in 1948 on a ship called the "Empire Windrush," and more came in subsequent years. They did not need a document to prove their status; their initial date of entry was deemed to be sufficient. Children born in the UK to Windrush parents were also automatically born British.

There are reports of a number of individuals being wrongfully caught by the hostile environment policy by, for example, being prevented from returning to the UK following overseas travel, facing bankruptcy and destitution as a result of losing jobs and access to benefits, or having their housing taken away.

Following media pressure, the government committed to "swiftly put right the wrongs that have been done." A new task force has handled more than 13,000 queries to date and guidance has been published for affected individuals. Concessions have been made for those who wish to naturalize as British citizens. Application fees have been waived for confirmation of immigration or nationality status.

In terms of the hostile environment policies, guidance for employers and landlords has been updated to deal with undocumented Commonwealth citizens. The government has also suspended a series of other policies, including checks on bank accounts and data-sharing with the revenue and customs, driver and vehicle licensing, and work and pensions agencies. A compensation scheme designed to help those wrongfully affected is to be set up shortly.

While it seems that much has been done to help those affected by the hostile policies, the government's response was unacceptably slow after much of the damage had been caused. Not only should lessons be learned from this, but the system as a whole needs to be reviewed seriously, with transparency and public consultation, if the government wants to stop this from happening again.

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## Firm in the News:

**Mr. Mehta** was a speaker on a panel entitled "*The Evolving Landscape for the Immigration Practitioner*" at the Practising Law Institute's Defending Immigration Removal Proceedings 2018 Seminar on July 26, 2018, in New York and which was also simultaneously webcast.

**Cora-Ann V. Pestaina** was a speaker on a panel entitled "*All 'Ls' Broken Loose in Texas*" at the American Immigration Lawyers Association's Web Seminar on July 31, 2018.

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