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

SEPTEMBER 2018 IMMIGRATION UPDATE

Posted on September 6, 2018 by Cyrus Mehta

Headlines:

State Dept. Announces Oversubscription of September Employment-Based Second and Third Preference Categories – The Department of State's Visa Bulletin for September 2018 announced oversubscription of employment-based visa numbers in several categories.

USCIS Extends, Expands Suspension of Premium Processing for Certain H-1B Petitions; Increases Premium Processing Fee – USCIS announced that it is extending the temporary suspension of premium processing for cap-subject H-1B petitions and, beginning September 11, 2018, will expand this temporary suspension to include certain additional H-1B petitions. USCIS said it estimates that these suspensions will last until February 19, 2019. USCIS is also raising the fee for premium processing.

USCIS Automatically Extends EAD Validity for Certain Haiti and Yemen TPS Beneficiaries; Reminders Issued for Hondurans, Syrians, Nepalese – USCIS is automatically extending the validity of employment authorization documents for certain temporary protected status beneficiaries from Haiti and Yemen. Reminders were also issued for other countries.

USCIS Updates Guidance, Accepts Comments on Regional Center Geographic Area – USCIS is updating guidance and accepting comments regarding a regional center's geographic area, requests to expand the geographic area, and how such requests affect the filing of Form I-526 petitions.

Burbank Man Who Allegedly Led Prescription Drug Ring Arrested on New Charges of Fraudulently Procuring U.S. Citizenship – A Burbank, California, man who operated a string of allegedly sham medical clinics was arrested on new charges that he unlawfully procured U.S. citizenship. The man already faces

federal charges of using the clinics to orchestrate a massive narcotics scheme.

Canada – On July 31, 2018, amendments to Canada's Immigration and Refugee Protection Regulations providing for the expansion of biometric information collection for foreign nationals seeking to enter or remain in Canada entered into force.

Firm in the News...

Details:

Back to Top

State Dept. Announces Oversubscription of September Employment-Based Second and Third Preference Categories

The Department of State's Visa Bulletin for the month of September 2018 includes the following excerpted information:

WORLDWIDE, EL SALVADOR, GUATEMALA, HONDURAS, MEXICO, AND PHILIPPINES EMPLOYMENT-BASED SECOND (E2), Third (E3), and Third Other Worker (EW) PREFERENCES: As readers were advised in item F of the July Visa Bulletin, there has been an extremely high rate of demand for Employment numbers, primarily for USCIS adjustment of status applicants as a result of the successful implementation of their new interview process. Therefore, pursuant to the Immigration and Nationality Act, it has been necessary to impose E2, E3, and EW Final Action Dates for the month of September with these dates being imposed immediately for new requests for visa numbers. 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 and in October, the first month of fiscal year 2019, the final action dates will be returned to those established for August.

Readers were also advised in item F of the July Visa Bulletin that some retrogression might occur prior to the end of the fiscal year. It has been necessary to retrogress the September Final Action Dates for the China Employment-Based Second, and India Employment Second, Third, and Third Other Worker preferences in an effort to hold worldwide number use within the maximum allowed under their FY 2018 annual limits. This will only be temporary and in October, the first month of fiscal year 2019, the final action

dates will be returned to those established for August.

Visa Availability in the Coming Months

EMPLOYMENT-based categories (potential monthly movement)

Employment First:

WORLDWIDE (all countries): October Final Action Dates will be imposed for all countries. Limited, if any forward movement can be expected prior to December.

Employment Second:

Worldwide: Current for the foreseeable future.

China: Slow movement pending receipt of demand from recent advances

India: Up to two weeks

Employment Third:

Worldwide: Current

China: Up to three weeks

India: Slow movement pending receipt of demand from recent advances

Mexico: Current

Philippines: Minimal

Employment Fourth: Current for most countries

El Salvador, Guatemala, and Honduras: Little, if any forward movement

Mexico: Up to three months

Employment Fifth: The category will remain "Current" for most countries

China-mainland born: Up to one week

Vietnam: Steady forward movement

The above final action date projections for the indicate what is likely to happen on a monthly basis through January. The determination of the actual monthly final action dates is subject to fluctuations in applicant demand and a number of other variables.

Back to Top

USCIS Extends, Expands Suspension of Premium Processing for Certain H-1B Petitions; Increases Premium Processing Fee

U.S. Citizenship and Immigration Services (USCIS) announced on August 28, 2018, that it is extending the previously announced temporary suspension of premium processing for cap-subject H-1B petitions and, beginning September 11, 2018, will expand this temporary suspension to include certain additional H-1B petitions. USCIS said it estimates that these suspensions will last until February 19, 2019, and that it will notify the public via uscis.gov before resuming premium processing for these petitions. The previously announced suspension of premium processing for fiscal year 2019 cap-subject H-1B petitions was originally slated to last until September 10, 2018. USCIS also said it is raising the premium processing fee.

Suspension extended, expanded. USCIS said the suspension will help the agency to reduce overall H-1B processing times by allowing it to:

- Process long-pending petitions, which USCIS has been unable to process due to the high volume of incoming petitions and premium processing requests over the past few months;
- Be responsive to petitions with time-sensitive start dates; and
- Prioritize adjudication of H-1B extension-of-status cases that are nearing the 240-day mark.

According to reports from employers, an increasing number of employees were insisting on premium processing for petitions due to the increase in denials and requests for evidence (RFEs), as well as USCIS's "no deference" policy, assertion of its ability to deny cases without RFEs, and its recent initiative to start removal proceedings upon denial of nonimmigrant petitions.

While H-1B premium processing is suspended, USCIS will reject any Form I-907, Request for Premium Processing Service, filed with an affected Form I-129, Petition for a Nonimmigrant Worker. If a petitioner submits one combined check for the Form I-907 and Form I-129 H-1B fees, both forms will be rejected. The expanded temporary suspension applies to all H-1B petitions filed at the Vermont and California Service Centers (excluding cap-exempt filings as noted below).

USCIS said it will continue premium processing of Form I-129 H-1B petitions that are not currently suspended if the petitioner properly filed an associated

Form I-907 before September 11, 2018. Therefore, USCIS will refund the premium processing fee if:

- The petitioner filed the Form I-907 for an H-1B petition before September 11, 2018; and
- USCIS did not take adjudicative action on the case within the 15-calendar-day processing period.

The suspension does not apply to:

1. Cap-exempt petitions that are filed exclusively at the California Service Center because the employer is cap-exempt or because the beneficiary will be employed at a qualifying cap-exempt institution, entity, or organization; or
2. Petitions filed exclusively at the Nebraska Service Center by an employer requesting a "Continuation of previously approved employment without change with the same employer" (Box b. on Part 2, question 2, page 2 of the current Form I-129) with a concurrent request to:
    1. Notify the office in Part 4 so each beneficiary can obtain a visa or be admitted. (Box on Part 2, question 4, page 2 of the current Form I-129); or
    2. Extend the stay of each beneficiary because the beneficiary now holds this status. (Box c. on Part 2, question 4, page 2 of the current Form I-129).

This temporary suspension of premium processing does not apply to any other nonimmigrant classifications filed on Form I-129, USCIS said.

While premium processing is suspended, petitioners may submit a request to expedite an H-1B petition if they meet the criteria on the Expedite Criteria webpage. The petitioner must demonstrate that he or she meets at least one of the expedite criteria, and petitioners should be prepared to submit documentary evidence to support their expedite requests.

USCIS said it reviews all expedite requests on a case-by-case basis and that requests are granted "at the discretion of the office leadership."

The announcement is at https://www.uscis.gov/news/uscis-extends-and-expands-suspension-premium-processing-h-1b-petitions-reduce-delays.

Increased fee for premium processing. USCIS announced on August 31, 2018, that it is raising the premium processing fee for Form I-129, Petition for a Nonimmigrant Worker and Form I-140, Immigrant Petition for Alien Workers, beginning on October 1, 2018. The premium processing fee will increase to $1,410, a 14.9 percent increase from the current fee of $1,225. This increase "represents the percentage change in inflation since the fee was last increased in 2010 based on the Consumer Price Index for all Urban Consumers," USCIS said.

Premium processing is an optional service that allows petitioners to request 15-day processing of certain employment-based immigration benefit requests if they pay an extra fee. The premium processing fee is paid in addition to the base filing fee and any other applicable fees, which cannot be waived.

USCIS said it intends to hire additional staff and invest in information technology systems with the funds generated by the fee increase.

The USCIS announcement is at https://www.uscis.gov/news/news-releases/uscis-adjusting-premium-processing-fee. The related Federal Register final rule is at https://www.federalregister.gov/documents/2018/08/31/2018-19108/adjustment-to-premium-processing-fee.

Back to Top

USCIS Automatically Extends EAD Validity for Certain Haiti and Yemen TPS Beneficiaries; Reminders Issued for Hondurans, Syrians, Nepalese

U.S. Citizenship and Immigration Services (USCIS) is automatically extending the validity of employment authorization documents (EADs) for certain temporary protected status (TPS) beneficiaries from Haiti and Yemen.

Haiti. USCIS said EADs issued under Haitian TPS are automatically extended through January 17, 2019, for certain beneficiaries with an EAD based on that TPS status. EADs under Haitian TPS may now be valid through January 17, 2019, if the EAD includes a category code of A12 or C19, the beneficiary has not yet received his or her new EAD, and:

- The EAD expired on January 22, 2018, and the beneficiary applied for a new EAD during the last re-registration period; or
- The EAD expired on July 22, 2017, and the beneficiary applied for a new

EAD on or after May 24, 2017.

Affected beneficiaries may continue to use their current EADs as evidence of work authorization through January 17, 2019, USCIS said. Because they have pending EAD applications, USCIS is mailing them an individual Notice of Continued Evidence of Work Authorization that provides additional evidence of this automatic extension to show to employers Those who have not yet received the Notice of Continued Evidence of Work Authorization should contact USCIS at 202-272-8377 or 800-375-5283 (TTY 800-767-1833). USCIS says affected beneficiaries "may provide your employer with this notice until you receive your Notice of Continued Evidence of Work Authorization." If USCIS approves the TPS re-registration application and the beneficiary applied for a new EAD, he or she should receive a new EAD with the expiration date of July 22, 2019.

Yemen. USCIS also has automatically extended the validity of EADs issued under Yemen TPS with an original expiration date of September 3, 2018, for 180 days, through March 2, 2019. Individuals who have EADs with an expiration date of March 3, 2017, and who applied for a new EAD during the last re-registration period for Yemen but have not yet received their new EADs are covered by this automatic EAD extension. USCIS had recently announced an extension of the designation of Yemen for Temporary Protected Status (TPS) for 18 months, from September 4, 2018, through March 3, 2020.

Those whose EADs are covered by this automatic extension may continue to use their existing EADs through March 2, 2019, as evidence that they are authorized to work. To prove that they are eligible to continue working legally, USCIS said such beneficiaries may show the following documentation to their employers. Government agencies may also accept these documents if they need to determine their immigration status:

- The TPS-related EAD with a September 3, 2018, expiration date; or
- The TPS-related EAD with a March 3, 2017, expiration date and the EAD application receipt (Form I-797C, Notice of Action) that notes the application was received on or after January 4, 2017

Honduras, Syria, Nepal. The Systematic Alien Verification for Entitlements (SAVE) program released the following reminders in its July 2018 newsletter:

- TPS for Honduras will terminate January 5, 2020. EADs are automatically

extended through January 1, 2019.
- TPS for Syria is designated through September 30, 2019. EADs are automatically extended through September 27, 2018.
- TPS for Nepal will terminate June 24, 2019. EADs are automatically extended through December 21, 2018.

The USCIS notice about the Haiti EAD extension is at https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-haiti (scroll down to "Automatic Employment Authorization Document (EAD) Extension"). The notice of TPS extension for Yemen is at https://www.gpo.gov/fdsys/pkg/FR-2018-08-14/html/2018-17556.htm. A Federal Register notice on the Yemen EAD extension is at https://bit.ly/2MhmzBq.

Back to Top

USCIS Updates Guidance, Accepts Comments on Regional Center Geographic Area

U.S. Citizenship and Immigration Services (USCIS) issued a memorandum on August 24, 2018, announcing that it is updating guidance in the *USCIS Policy Manual* regarding a regional center's geographic area, requests to expand the geographic area, and how such requests affect the filing of Form I-526, Immigrant Petition by Alien Entrepreneur. USCIS said the updated policy guidance "is controlling and supersedes any prior guidance."

USCIS said the updated policy guidance:

- Clarifies that USCIS reviews whether an economic methodology is reasonable to demonstrate that a regional center's geographic area is limited, to include whether the multipliers and assumptions about a project's geographic impact are reasonable.
- Explains that a regional center's geographic area must be limited, contiguous, and consistent with the purpose of concentrating pooled investment in defined economic zones.
- Affirms that a Form I-924 amendment must be filed and approved to expand the regional center's geographic area for requests made on or after February 22, 2017.
- Clarifies how USCIS adjudicates regional center-associated Form I-526 petitions where the regional center has requested an expansion of its geographic area.

- Explains that USCIS considers a change in regional center affiliation a material change in cases where the change takes place after Form I-526 has been filed.

USCIS is accepting comments on the policy guidance update until September 9, 2018. For more information, see https://www.uscis.gov/outreach/feedback-opportunities/policy-manual-comment.

The policy alert is at https://www.uscis.gov/sites/default/files/USCIS/Laws/20180824_EB5GeographicArea.pdf. The *USCIS Policy Manual* is at https://www.uscis.gov/policymanual/HTML/PolicyManual.html.

Back to Top

Burbank Man Who Allegedly Led Prescription Drug Ring Arrested on New Charges of Fraudulently Procuring U.S. Citizenship

A Burbank, California, man who operated a string of allegedly sham medical clinics was arrested on August 7, 2018, on new charges that he unlawfully procured U.S. citizenship. The man already faces federal charges of using the clinics to orchestrate a massive narcotics scheme.

Armen Simonyan, who was free on bond in the narcotics-trafficking case, was arrested after being named in a two-count indictment returned by a federal grand jury. The new indictment charges Mr. Simonyan with unlawful procurement of U.S. citizenship and making a false statement on a passport application.

The indictment outlines Mr. Simonyan's "15-year history of securing United States immigration benefits via fraud and identity theft," USCIS said. Mr. Simonyan allegedly entered the United States from Armenia under a stolen identity and a fraudulent passport. He then sought asylum in the United States, allegedly using a false narrative that he was born in Azerbaijan to parents of mixed Armenian-Azerbaijani nationality; that his family suffered ethnic violence, including the murder of both of his parents; and that he fled to the United States via Russia. The indictment alleges that, in fact, Mr. Simonyan was born in Armenia to Armenian parents, that he entered the United States from Armenia, and that both of his parents were alive.

Mr. Simonyan will lose his U.S. citizenship if convicted of the immigration fraud charge.

The indictment also charges Mr. Simonyan with lying on his application for a U.S. passport after he gained citizenship. The alleged false statements related to his place of birth, his date of birth, and his claim that his mother was deceased.

Mr. Simonyan is currently scheduled to go on trial in the narcotics case on February 12, 2019. If convicted of the charges in the new indictment, he would face up to 20 years in prison, in addition to the statutory maximum of 60 years in federal prison that he faces in the narcotics case.

The immigration investigation was conducted by U.S. Immigration and Customs Enforcement's Homeland Security Investigations (HSI) unit and the U.S. Department of State's Diplomatic Security Service, and was conducted under the aegis of HIS's Document and Benefit Fraud Task Force. Substantial assistance was provided by U.S. Citizenship and Immigration Services' Fraud Detection and National Security unit, the Drug Enforcement Administration, and the U.S. Department of Health and Human Services' Office of Inspector General.

The USCIS announcement is at https://www.uscis.gov/news/news-releases/burbank-man-who-allegedly-led-prescription-drug-ring-arrested-new-charges-fraudulently-procuring-us-citizenship.

Back to Top

Canada

On July 31, 2018, amendments to Canada's Immigration and Refugee Protection Regulations providing for the expansion of biometric information collection for foreign nationals seeking to enter or remain in Canada entered into force.

Since July 31, 2018, when these amendments became effective, the Canada Border Services Agency, Royal Canadian Mounted Police, Shared Services Canada, and Immigration, Refugees and Citizenship Canada have begun collecting biometric information for all foreign nationals between the ages of 14 and 79 applying for work permits, study permits, temporary resident permits, temporary resident visas, and Canadian permanent residence, regardless of

whether visas are required. These rules do not apply to U.S. nationals seeking to enter Canada on a temporary status (permanent residence applications will require biometrics for U.S. nationals) as well as visa-exempt nationals seeking to enter Canada solely as visitors with valid Electronic Travel Authorization (eTA) documents.

The expansion of biometric collection is being rolled out in two phases. Since July 31, 2018, citizens of most countries in Europe, Africa, and the Middle East (and some Asian countries) must provide biometric information. On December 31, 2018, the second phase will add countries from both Asia and the Americas (including Australia and New Zealand). In practice, biometric information is being collected directly at Canadian ports-of-entry (POEs) for visa-exempt nationals eligible to present their temporary resident applications upon arrival in Canada and at Visa Application Centers for visa-requiring nationals presenting their temporary resident applications from abroad.

To facilitate this increased biometric collection, the government of Canada has announced the implementation of "biometric collection service points" at approximately 57 POEs across Canada (which includes all major airports) and in numerous locations around the world. The biometric information collected is valid for a 10-year period. Foreign nationals who have already provided biometric information will not be subject to this new regulation until their biometric information expires. Similarly, applicants applying to renew their temporary resident status from within Canada will not need to provide biometric information until the implementation of in-Canada enrollment services expected in February 2019.

The objective behind this biometric expansion project is to protect the safety of Canada's borders and the security of all Canadians by providing authorities with the tools necessary to effectively screen temporary and permanent resident applicants before their entry into Canada. It remains unclear whether the benefits of the Biometric Expansion Project will outweigh potential frustrations associated with a more cumbersome application process, especially for visa-exempt nationals who may be unaccustomed to these types of increased security measures.

Back to Top

Firm in the News

Cyrus Mehta's views on the latest immigration law developments have been quoted in Time of India, https://timesofindia.indiatimes.com/world/us/us-eases-rules-for-foreign-students/articleshow/65456857.cms and Law 360, https://www.law360.com/articles/1078426/immigration-attys-brace-for-surging-i-9-audits

Back to Top