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

MID-SEPTEMBER 2018 IMMIGRATION UPDATE

Posted on September 21, 2018 by Cyrus Mehta

Headlines:

USCIS Now Accepting Copies of Negative O Visa Consultations Directly from Labor Unions – USCIS has begun accepting copies of negative consultation letters directly from labor unions relating to a current or future O nonimmigrant visa petition request.

USCIS Changes Filing Location for Petition to Remove Conditions on Residence – Petitioners must send Form I-751 to a USCIS Lockbox facility.

USCIS Extends Validity of Certain EADs for TPS Beneficiaries From Somalia, El Salvador – USCIS has automatically extended the validity of certain employment authorization documents issued under the temporary protected status designations of Somalia and El Salvador.

Attorney General Delivers Remarks to Largest IJ Class in History – Among other things, Mr. Sessions said more IJs will be added by the end of this calendar year, "with a goal of seeing a 50 percent increase in the number" of IJs since the beginning of the Trump administration.

Pro Bono: Visit to a Remote Detention Facility in Georgia – Sophia Genovese, an attorney with Cyrus D. Mehta and Associates, PLLC, traveled to a remote detention facility in Folkston, Georgia, along with several others to provide pro bono legal assistance to detained asylum-seekers in their bond and parole proceedings.

William Reich—In Memoriam – Among his many professional affiliations and recognitions, Bill was a long-time member of the Alliance of Business Immigration Lawyers, where he was highly respected and beloved.

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USCIS Now Accepting Copies of Negative O Visa Consultations Directly from Labor Unions

Effective September 14, 2018, U.S. Citizenship and Immigration Services (USCIS) has begun accepting copies of negative consultation letters directly from labor unions relating to a current or future O nonimmigrant visa petition request. A consultation letter from a U.S. peer group, labor organization, and/or management organization is generally required for petitions in the O visa classification.

O-1 and O-2 nonimmigrant visas are available to individuals with extraordinary ability in science, education, business, athletics, or the arts; individuals with extraordinary achievement in the motion picture or television industry; and certain essential support personnel.

USCIS explained that typically, a petitioner submits the necessary O visa consultation with the petition, and that this process requirement remains unchanged. USCIS Director L. Francis Cissna recently met with several labor unions to discuss concerns they had with the consultation process for O visa petitions, particularly "that some advisory opinions may be falsified by petitioners and submitted to USCIS as no-objections or favorable consultations, when in fact these were negative," the agency said. The labor unions will now be able to send a copy of a negative consultation letter to USCIS so it can be compared to the consultation letter submitted to USCIS by the petitioner.

USCIS said labor unions should send copies of negative O nonimmigrant consultation letters to UnionConsultationMailbox@uscis.dhs.gov. To make sure USCIS matches the letters to the correct petitions, labor unions should include the last five digits of each beneficiary's passport number in the consultation letters.

After six months, USCIS will analyze the data collected "to identify areas for improvement in the consultation process."

The announcement is at https://www.uscis.gov/news/alerts/uscis-now-accepting-copies-negative-o-visa-consultations-directly-labor-unions.

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USCIS Changes Filing Location for Petition to Remove Conditions on Residence

On September 10, 2018, U.S. Citizenship and Immigration Services (USCIS) changed the filing location for Form I-751, Petition to Remove Conditions on Residence. This form was previously filed at the California and Vermont Service Centers. Now, petitioners must send Form I-751 to a USCIS Lockbox facility. However, the California, Nebraska, Vermont, and Texas Service Centers will be the adjudicating offices. When filing at a USCIS Lockbox facility, petitioners have the option to pay the fee with a money order, personal check, cashier's check, or credit card.

For more information, see https://www.uscis.gov/unassigned/filing-location-change-form-i-751. USCIS's I-751 webpage is at https://www.uscis.gov/i-751.

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USCIS Extends Validity of Certain EADs for TPS Beneficiaries From Somalia, El Salvador

U.S. Citizenship and Immigration Services (USCIS) has automatically extended the validity of certain employment authorization documents (EADs) issued under the temporary protected status (TPS) designations of Somalia and El Salvador. Following are highlights:

Somalia. USCIS has automatically extended the validity of EADs issued under the TPS designation of Somalia with an original expiration date of September 17, 2018, for 180 days, through March 16, 2019. Additionally, individuals who have EADs with an expiration date of March 17, 2017, and who applied for a new EAD during the last re-registration period but have not yet received it are covered by this automatic extension.

Those who are covered by this automatic extension may continue to use their existing EADs through March 16, 2019, as evidence that they are authorized to work, USCIS said.

The following documentation constitutes proof of authorization for a Somali TPS beneficiary to continue working legally in the United States:

- A TPS-related EAD with a September 17, 2018, expiration date, or
- A TPS-related EAD with a March 17, 2017, expiration date and an EAD application receipt (Form I-797C, Notice of Action) noting that the application was received on or after January 17, 2017.

The Federal Register notice is at https://www.federalregister.gov/documents/2018/08/27/2018-18444/extension-of-the-designation-of-somalia-for-temporary-protected-status. USCIS's webpage on Somalian TPS is at https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-somalia.

El Salvador. USCIS has automatically extended the validity of EADs issued under the TPS designation of El Salvador through March 4, 2019. The EADs of TPS beneficiaries under the El Salvador designation whose EADs are based on TPS may now be valid through March 4, 2019, if the EAD includes a category code of A12 or C19, the beneficiary has not received his or her new EAD, and:

- The EAD has a marked expiration date of March 9, 2018, and the beneficiary applied for a new EAD after January 18, 2018; or
- The EAD has a marked expiration date of September 9, 2016, and the beneficiary applied for a new EAD on or after July 8, 2016.

USCIS said it will mail a Notice of Continued Evidence of Work Authorization to individuals who are eligible for the additional 180-day automatic extension. The notice will provide evidence of the automatic extension of the EAD through March 4, 2019, to show to employers. Individuals who receive the notice may use it in combination with their current EADs as evidence of work authorization through March 4, 2019. Those who have a pending EAD application and believe they are eligible for the additional automatic extension but did not receive the Notice of Continued Evidence of Work Authorization by September 4, 2018, should contact USCIS at 202-272-8377 or the USCIS Contact Center number at https://www.uscis.gov/contactcenter.

Eligible beneficiaries may show their employers USCIS's webpage on El Salvador TPS (click on the Automatic Employment Authorization Document (EAD) Extension link at https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-el-salvador in combination with the current EAD to demonstrate continued employment authorization until they receive their Notice of Continued Evidence of Work Authorization.

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Attorney General Delivers Remarks to Largest IJ Class in History

On September 10, 2018, Attorney General Jeff Sessions delivered remarks to 44 new Immigration Judges (IJs), the largest class of IJs in history.

Among other things, Mr. Sessions said more IJs will be added by the end of this calendar year, "with a goal of seeing a 50 percent increase in the number" of IJs since the beginning of the Trump administration.

He also said that "ood lawyers, using all of their talents and skill, work every day—like water seeping through an earthen dam—to get around the plain words of the to advance their clients' interests. Theirs is not the duty to uphold the integrity of the act. That is our most serious duty." He called attention to the fact that earlier in 2018, the Department of Homeland Security (DHS) "announced that it would seek to refer 100 percent of illegal border crossers to the Department of Justice for criminal prosecution in Federal courts." He said that U.S. Attorneys are prosecuting over 90 percent of those cases referred to the Department of Justice, which he noted is a "two to threefold increase" and is the " 'zero tolerance' policy you have heard about. You don't get to enter the border unlawfully, between ports of entry, and place our officers at risk without consequences."

Mr. Sessions said that the asylum system "has been abused for years to the detriment of the rule of law, sound public policy, and public safety." He said that "aying a few simple words—claiming a fear of return—has transformed a straightforward arrest for illegal entry and immediate return...too often into a prolonged legal process, where an alien may be released from custody into the United States and possibly never show up for an immigration hearing." He asserted that "the vast majority of the current asylum claims are not valid under the law." He said that for the past five years, only 20 percent of claims have been found to be meritorious after a hearing before an IJ, and that in addition, roughly 15 percent are found invalid by U.S. Citizenship and Immigration Services as a part of their initial credible fear screenings. "Further illustrating this point," Mr. Sessions said, "in 2009, DHS conducted more than 5,000 credible fear reviews. By 2016, only seven years later, that number had increased to 94,000. The number of these aliens placed in immigration court proceedings went from fewer than 4,000 to more than 73,000 by 2016—nearly a 19-fold increase—overwhelming the system and leaving legitimate claims buried."

Mr. Sessions also said it is the duty of the IJs to carry out his ruling on the principles of asylum and immigration law, and said "there will be more still to come." "When we depart from the law and create nebulous legal standards out of a sense of sympathy for the personal circumstances of a respondent in our immigration courts, we do violence to the rule of law and constitutional fabric that bind this great nation. Your job is to apply the law—even in tough cases. As we work to restore rule of law in our immigration system, we will send a clear message to the world that the lawless practices of the past are over. The world will know what our rules are, and great numbers will no longer undertake this dangerous journey."

The full text of Mr. Sessions' speech is at https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-largest-class-immigration-judges-history.

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Pro Bono: Visit to a Remote Detention Facility in Georgia

Sophia Genovese, an attorney with Cyrus D. Mehta and Partners, PLLC, traveled to a remote detention facility in Folkston, Georgia, along with several others to provide pro bono legal assistance to detained asylum-seekers in their bond and parole proceedings. The program was organized and led by the Southern Poverty Law Center's Southeast Immigrant Freedom Initiative (SIFI). SIFI currently only represents detained asylum-seekers in their bond and parole proceedings to assist as many as possible in obtaining release. Ms. Genovese noted that their rationale is that since bond and parole representation take up substantially less time than asylum representation, they can have a far greater impact in successfully obtaining release for several hundred asylum-seekers, who can hopefully thereafter obtain counsel to represent them in their asylum proceedings.

Folkston is extremely remote. It is about 50 miles northwest of Jacksonville, Florida, and nearly 300 miles from Atlanta, Georgia, where the cases from the Folkston ICE Processing Center are heard. Instead of transporting detained asylum-seekers and migrants to their hearings at the Atlanta Immigration Court, Immigration Judges (IJs) appear via teleconference. These proceedings lack due process, Ms. Genovese said. Rather, through assembly-line adjudication, IJs hear several dozen cases within the span of a few hours.

Even with the tireless efforts of the staff attorneys and volunteers at SIFI, she noted, there are too few attorneys to help every detainee at the Folkston ICE Processing Center, which houses almost 900 immigrants at any given time, leaving hundreds to navigate the confusing waters of immigration court alone.

During initial screenings, Ms. Genovese encountered numerous individuals who filled out their asylum applications on their own, using the Internet in the library to translate the application into their native language, translate their answers into English, and then hand in their I-589s to the IJ. While these asylum seekers are smart and resourceful, it is nearly impossible for them to successfully pursue their own asylum claims, she said. To make matters worse, if these asylum-seekers do not obtain release from detention ahead of their merits hearings where IJs will adjudicate their asylum claims, they will be left to argue their claims in the Atlanta Immigration Court, where the vast majority of asylum claims are denied. For those detained and/or unrepresented, that number is nearly 100%.

Ms. Genovese summarizes below the stories of some of the asylum-seekers she met in Folkston. If these individuals do not obtain counsel for the bond or parole proceedings, and/or if they are denied release, she said, they will be forced to adjudicate their claims in the Atlanta Immigration Court where they will almost certainly be ordered removed. Below are their stories, edited for conciseness:

Twenty-Five Year Old From Honduras Who Had Been Sexually Assaulted on Account of His Sexual Orientation

At the end of my first day in Folkston, I was asked to inform an individual, Mr. J-, that SIFI would be representing him in his bond proceedings. He's been in detention since March 2018 and cried when I told him that we were going to try and get him out on bond.

Mr. J- looks like he's about sixteen, and maybe weighs about 100 pounds. Back home in Honduras, he was frequently ridiculed because of his sexual orientation. Because he is rather small, this ridicule often turned into physical assault by other members of his community, including the police. One day when Mr. J- was returning from the store, he was stopped by five men from his neighborhood who started berating him on account of his sexual orientation. These men proceeded to sexually assault him, one by one, until he passed out. These men warned Mr. J- not to go to the police, or else they would find him

and kill him. Mr. J- knew that the police would not help him even if he did report the incident. These men later tracked down Mr. J-'s cellphone number, and continued to harass and threaten him. Fearing for his life, Mr. J- fled to the United States.

Mr. J-'s asylum claim is textbook and ought to be readily granted. However, given Sessions' recent unilateral change in asylum law based on private acts of violence, Mr. J- will have to fight an uphill battle to ultimately prevail. See *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018). If released on bond, Mr. J- plans to move in with his uncle, a U.S. citizen, who resides in Florida. Mr. J-'s case will then be transferred to the immigration court in Miami. Although the Immigration Court in Miami similarly has high denial rates, where nearly 90% of all asylum claims are ultimately denied, Mr. J- will at least have a better chance of prevailing there than he would in Atlanta.

Indigenous Mayan from Guatemala Who Was Targeted on Account of His Success as a Businessman

During my second day, I met with an indigenous Mayan from Guatemala, Mr. S-. He holds a master's degree in Education, owned a restaurant back home, and was the minister at his local church. He had previously worked in agriculture pursuant to an H-2B visa in Iowa, and then returned to Guatemala when the visa expired to open his business.

He fled Guatemala earlier this year on account of his membership in a particular social group. One night after closing his restaurant, he was thrown off his motorcycle by several men who he believes were part of a local gang. They beat him and threatened to kill him and his family if he did not give them a large sum of money. They specifically targeted Mr. S- because he was a successful businessman. They warned him not to go to the police or else they would find out and kill him. The client knew that the police would not protect him from this harm on account of his ethnic background as an indigenous Mayan. The day of the extortionists' deadline to pay, Mr. S- didn't have the money to pay them off, and was forced to flee or face a certain death.

Mr. S- has been in immigration detention since March. The day I met with him at the end of August was the first time he had been able to speak to an attorney.

Mr. S-'s prospects for success are uncertain. Even prior to the recent decision in

Matter of A-B-, asylum claims based on the particular social group of "wealthy businessmen" were seldom granted. However, if Mr. S- can show that he was also targeted on account of his indigenous Mayan ancestry, he can perhaps also raise an asylum claim based on his ethnicity. The combination of his particular social group and ethnicity may be enough to entitle him to relief.

As business immigration attorneys may also point out, if Mr. S- can somehow locate an employer in the United States to sponsor him, he may be eligible for employment-based relief based on his master's degree, prior experience working in agriculture, and/or his business acumen on account of his successful restaurant management. Especially if Mr. S- is not released on bond and forced to adjudicate his claims in the Atlanta Immigration Court where asylum denial rates are high, his future attorney may also want to explore these unorthodox strategies.

Indigenous Mam-Speaking Guatemalan Persecuted on Account of His Race, Religion, and Particular Social Group

My third day, I met with Mr. G-, an indigenous Mam from Guatemala. Mr. G- is an incredibly devout Evangelical Christian and one of the purest souls I have ever met. He has resisted recruitment by rival gangs in his town and has been severely beaten because of his resistance. He says his belief in God and being a good person is why he has resisted recruitment. He did not want to be responsible for others' suffering. The local gangs constantly assaulted Mr. G- due to his Mam heritage, his religion, and his resistance of them. He fled to the United States to escape this persecution.

Mr. G- only speaks Mam, an ancient Mayan dialect. He does not speak Spanish. Because of this, he was unable to communicate with immigration officials about his credible fear of return to his country upon his initial arrival in November 2017. Fortunately, the USCIS asylum officer deferred Mr. G-'s credible fear interview until they could locate a Mam translator. However, one was never located, and he has been in immigration detention ever since.

August 29, 2018, nine months into his detention, was the first time he was able to speak to an attorney through an interpreter who spoke his language. Mr. G- was so out of the loop with what was going on that he did not even know what the word "asylum" meant. For nine months, Mr. G- had to wait to find out what was going on and why he was in detention. My colleague and I spoke with him for almost three hours. We could not provide him with satisfactory answers

about whether SIFI would be able to take his case, and when or if he would be let out of detention. Given recent changes in the law, we couldn't tell him if his asylum claim would ultimately prevail.

Mr. G- firmly stated that he would be killed if he were forced to go back to Guatemala. He said that if his asylum claim is denied, he will have to put his faith in God to protect him from what is a certain death. He said God is all he has.

Even without answers, this client thanked us until he was blue in the face. He said he did not have any money to pay us but wanted us to know how grateful he was for our help and that he would pray for us. Despite the fact that his life was hanging in the balance, he was more concerned about our time and expense helping him. He went on and on for several minutes about his gratitude. It was difficult for us to hold back tears.

Mr. G- is the reason asylum exists, but under our current framework, he will almost certainly be deported, especially if he cannot locate an attorney. Mr. G- has an arguable claim under *Ordonez-Quino v. Holder*, on account of his Mam heritage, and an arguable claim on account of his evangelical Christianity, given that Mr. G-'s persecution was compounded by his visible Mam ethnicity and vocal evangelical beliefs. His resistance to gang participation will be difficult to overcome, though, as the case law on the subject is primarily negative. Mr. G-'s low prospects of success are particularly heart-wrenching.

Twenty-Year Old Political Activist From Honduras, Assaulted by Military Police on Account of His Political Opinion

I also assisted in the drafting of a bond motion for a 20-year-old political activist from Honduras, Mr. O-, who had been severely beaten by the military police on account of his political opinion and activism.

Mr. O- was a prominent and vocal member of an opposition political group in Honduras. During the November 2017 Honduran presidential elections, Mr. O- assisted members of his community to travel to the polling stations. When election officials closed the polls too early, Mr. O- reached out to military police patrolling the area to demand that they re-open the polling stations so Hondurans could rightfully cast their votes. The military police became angry with Mr. O-'s insistence and began to beat him by stomping and kicking him, leaving him severely wounded. Mr. O- reported the incident to the police, but

was told there was nothing they could do.

A few weeks later, Mr. O- was specifically targeted again by the military police when he was on his way home from a political meeting. The police pulled him from his car and began to beat him, accusing him of being a rioter. He was told to leave the country or else he would be killed. He was also warned that if he went to the national police, he would be killed. Fearing for his life, Mr. O- fled to the United States in April 2018 and has been in detention ever since.

SIFI was able to take on his bond case in August, and by the end of my trip, the SIFI team had submitted his request for bond. Since Mr. O-'s asylum claim is particularly strong, and because he has family in the United States, it is highly likely that his bond will be granted. From there, we can only hope that he encounters an IJ who appropriately follows the law and will grant him asylum.

For more, see https://bit.ly/2x9Nhl7.

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William Reich—In Memoriam

William Reich (bio: http://www.abil.com/lawyers/lawyers-reich.cfm), "Bill" to his friends, began life as the child of Holocaust survivors. He was born in Tel Aviv on October 5, 1947, about seven months before the State of Israel was established in May 1948. In 1956, at age nine, he and his family emigrated to Guatemala. Two years later, speaking only Spanish and Hebrew, they made their way to New York City and began a life as recent immigrants.

In the beginning, Bill's knowledge about his new country came mostly from the movies, but he quickly learned its language and customs. As so many immigrant children do, he helped his parents navigate the complexities of life in a bustling American city. Growing up in the boroughs, wearing second-hand clothing, and becoming aware of his parents' immense sacrifices to ensure his and his sister's success in their chosen land, Bill developed a lifelong appreciation for immigrants. He understood and empathized with their struggles, and he counted himself fortunate to be a part of their ongoing journeys.

At age 17, in 1964, Bill became a U.S. citizen. After graduating from Queens College, he left the big city and attended law school in Buffalo, a place he came to love and never left. In 1974, he joined the Buffalo law firm that would come

to be known as Serotte Reich, where he began his career practicing criminal law and litigation. But his passion for immigrants prevailed, and soon he introduced his firm to the growing and dynamic field of immigration law. Four decades later, Bill had become recognized as one of our nation's top legal strategists in immigration law, particularly when solving complicated and challenging waiver and border cases. Many immigration lawyers across the United States sent their toughest cases to Bill to resolve. While never offering guarantees, he turned immigration disasters into successes, allowing foreign students to fulfill their dreams and finish school, helping separated families to be reunited, and transforming many near tragedies into cases with miraculous endings. Bill sought out and relied on the good graces of fair and kind adjudicators, and found discretion in places where everyone else had given up hope. As one close colleague recently said, "If any lawyer could fit a square peg in a round hole, it was Bill."

Bill was generous with his knowledge, frequently mentoring other lawyers, speaking at regional and national conferences hosted by the American Immigration Lawyers Association and other groups, giving numerous media interviews, and publishing many articles dealing with the trans-border movement of business personnel under the North American Free Trade Agreement as well as unique immigration issues faced by border practitioners. Among his many professional affiliations and recognitions, Bill was a long-time member of the Alliance of Business Immigration Lawyers, where he was highly respected and beloved.

As well as being a brilliant and passionate immigration lawyer, Bill was a deeply honest, genuine, and kind person. He was ethical and considerate and he inspired his colleagues to be both good lawyers and good human beings. His zest for life was evident to all who knew him. He drew upon the challenges he and his family faced as new arrivals to this country and embodied the indomitable immigrant spirit. Bill's was the ultimate success story, as he committed himself to fighting for the rights of those immigrants and refugees who followed in his family's footsteps. He was a giant in his field who lifted up many others. He will be deeply missed.

Rest in peace, Bill and Shlomo!

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Firm in the News

Cyrus Mehta was quoted extensively by *The Times of India* in "Students seeking jobs hit H-1B premium wall." The article is at

https://timesofindia.indiatimes.com/india/students-seeking-jobs-hit-h-1b-premium-wall/articleshow/65726829.cms

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