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US IMMIGRATION & NATIONALITY LAW

MID-FEBRUARY 2019 IMMIGRATION UPDATE

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Headlines:

USCIS Clarifies Advance Parole Policy When Renewal Application Is Pending – The USCIS Ombudsman reported that the agency has resolved a discrepancy in the application of policy concerning persons with advance parole who recently filed renewal applications and then left the United States.

USCIS To Issue New Version of Form I-539 and New I-539A, Effective March 11 – USCIS announced that it has revised Form I-539, Application to Extend/Change Nonimmigrant Status, and is introducing a new Form I-539A, effective March 11.

USCIS Now Accepting Copies of Negative P Visa Consultations Directly from Labor Unions – The agency has begun accepting copies of negative consultation letters directly from labor unions relating to current or future P nonimmigrant visa petitions.

Applicants Can Now Request Certificates of U.S. Citizenship Online – USCIS announced that applicants can now complete and file online Forms N-600, Application for Certificate of Citizenship, and N-600K, Application for Citizenship and Issuance of Certificate Under Section 322.

ICE Indicts Eight People for U.S. Student Visa System Violations in Undercover Operation – ICE recently announced three indictments charging eight individuals with conspiracy to commit visa fraud and harboring aliens for profit, following an undercover investigation by ICE's Homeland Security Investigations. Six of the defendants were arrested in the metropolitan Detroit area. Two others were arrested in Lake Mary, Florida; and Culpeper, Virginia.

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USCIS Clarifies Advance Parole Policy When Renewal Application Is Pending

The U.S. Citizenship and Immigration Services (USCIS) Ombudsman recently reported that the agency has resolved a discrepancy in the application of policy concerning persons with advance parole who recently filed renewal applications and then left the United States. In some cases, their renewal applications were denied upon their return even when their original advance parole was still valid. The Service Center Operations Directorate was issuing denials but the Field Operations Directorate still approved renewal applications where the applicants had traveled abroad as long as they returned to the United States with previously approved and still valid advance parole documents, the Ombudsman explained. USCIS has now clarified its policy.

The Ombudsman noted that USCIS adjudicators are now consistently using information from the Arrival and Departure Information System, which identifies those who file advance parole applications and then leave the United States. That was triggering denials under USCIS regulations, stating that "if you leave the U.S. during the pendency of the application you will be deemed to have abandoned it."

In practice, there were inconsistencies in the way USCIS was enforcing those instructions, as noted above. Furthermore, the Ombudsman noted, "there were practical implications to the new practice of denying these renewals for advance parole." In many cases, applicants re-filed their parole applications, in many cases without a fee, resulting in more work for USCIS. In addition, if an individual did not receive a decision on the re-filed advance parole application before a planned trip, the applicant often would appear at a local USCIS field office to apply for emergency advance parole. "In the end, therefore, USCIS was expending substantial resources to deny and re-adjudicate parole applications for: (1) individuals who it had already determined were eligible for an original advance parole document; and (2) were in fact traveling with authorization under the original parole document that was still valid upon return."

The Ombudsman said it met numerous times with USCIS over the course of a year to discuss these issues, and that the Ombudsman "made the case that the denials, while authorized by law, did not make operational sense and did not in

reality further the spirit of the policy encapsulated by the instructions." The Ombudsman said that USCIS Director Francis Cissna reversed course in November 2018. The USCIS statement, "Emergency Travel," on its website now states, "At times, an individual may have an approved advance parole document while a second one is pending. Individuals may travel on the approved parole document, provided the document is valid for the entire duration of the time abroad. The pending Form I-131 will not be considered abandoned in this situation."

The Firm noted that although USCIS has announced it will no longer deny pending advance parole applications if an individual travels on an unexpired advance parole while the new parole application is pending, this does not address what happens to those who travel on an H or L visa while an advance parole application is pending. Based on the wording of the USCIS announcement, it appears that advance parole applications will still be denied if an individual travels on an H or L visa. The Firm noted that anecdotal evidence, although limited at this time, indicates that this is the current practice at USCIS. Attempts to obtain clarification from USCIS have not yet received a response.

The USCIS's "Emergency Travel" statement is at https://www.uscis.gov/green-card/green-card-processes-and-procedures/travel-documents/emergency-travel. The Ombudsman disseminated this news via email on February 8, 2019.

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USCIS To Issue New Version of Form I-539 and New I-539A, Effective March 11

U.S. Citizenship and Immigration Services (USCIS) announced on February 11, 2019, that it has revised Form I-539, Application to Extend/Change Nonimmigrant Status, and is introducing a new Form I-539A. The revised and new forms will be required for filings on and after March 11, 2019.

Form I-539 is used for a variety of application types, including:

- Certain nonimmigrant applications for an extension of stay
- Certain nonimmigrant applications for a change of status
- Reinstatement for F-1 and M-1 students

Based on prior drafts of the form and its information collection review, it appears that USCIS has expanded the scope of information to be gathered and

will change the filing and adjudication requirements significantly. Below are highlights:

Biometrics and personal appearance requirement. The first major change involves in-person collection of biometrics (fingerprints, photograph, and signature). Generally, biometrics have only been collected for permanent status applications, and not for the temporary status applications processed on Form I-539. As of March 11, 2019, all new I-539 and I-539A (more about the I-539A below) applicants must be photographed and fingerprinted at the nearest USCIS Application Support Center (ASC). After filing, every applicant and co-applicant, regardless of age, will receive a biometric services appointment notice in the mail.

New Form I-539A created for co-applicants. The second major change is the procedure to be followed when there are multiple people filing together, such as a parent ("primary applicant") and one or more children ("co-applicants"). Currently, the primary applicant completes and signs the I-539 and identifies each co-applicant on the form's Supplement A. The form only requires the signature of the primary applicant and there is one filing fee (currently $370).

Starting March 11, a newly created form, the I-539A, must be completed for each individual co-applicant and submitted with the primary applicant's I-539. Each co-applicant must sign his or her respective I-539A. (Parents can continue to sign the forms for children under 14 years of age.)

Fee increase for biometrics. Because biometrics will be collected with the application, an additional $85 biometrics fee will be charged per I-539 and I-539A applicant. A typical family consisting of an H-4 spouse and two minor H-4 children will have to pay $625 ($370 filing fee plus three $85 biometrics fees) to extend nonimmigrant status.

(Certain nonimmigrant applications already require biometrics and payment of the fee when filing the I-539, i.e., V nonimmigrants and CNMI applications. Those procedures and costs will remain unchanged.)

Premium processing. USCIS did not address premium processing with respect to the agency's proposed handling of I-539/I-539A applications accompanying principal applications (such as
H-4 applications filed with a premium-processed H-1B petition). In the past, the USCIS generally processed such dependent I-539 applications on an expedited

basis so the family members' status would be adjudicated and updated together. The new biometrics requirement likely will mean that dependent I-539 and I-539A applications will no longer be moved along in lockstep with a principal's premium-processed nonimmigrant petition.

Identifying the form edition. How can you tell which form you have? The form edition information is in the bottom left corner of the form. The current edition of the I-539 available on the USCIS website is the 12/23/16 edition. This is identified by the following notation in the bottom left corner of each page of the form: "Form I-539 12/23/16 N."

The new edition of the I-539, the new I-539A, and their respective instructions will be identified by "02/04/19" in the bottom left corner of each page.

Effective date: March 11, 2019. Applicants must use the 02/04/19 edition of the I-539 and must begin using the I-539A for co-applicants on March 11, 2019, although the agency currently states that it will not release the form to the public until that date. It is hoped that USCIS might delay the effective date to avoid the disruption that would result from such an accelerated implementation date.

The USCIS announcement is at https://www.uscis.gov/news/alerts/uscis-publish-revised-form-i-539-and-new-form-i-539a.

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

U.S. Citizenship and Immigration Services (USCIS) said that effective February 8, 2019, the agency has begun accepting copies of negative consultation letters directly from labor unions relating to current or future P nonimmigrant visa petitions. USCIS noted that a consultation letter from a U.S. labor organization is generally required for petitions in the P visa classification, which covers athletes, artists, entertainers, and their essential support personnel.

Typically, a petitioner submits the necessary P visa consultation with the petition, and that process requirement remains unchanged. After reported concerns from labor unions that some consultation letters, also known as advisory opinions, may have been falsified by petitioners and submitted to

USCIS as no-objections or favorable consultations, when in fact they were negative, USCIS announced that it would begin accepting copies of negative consultation letters for O visa petitions. USCIS is now expanding this to P visa petitions, and labor unions can send copies of negative O or P visa petition consultation letters directly to USCIS so that they can be compared to the consultation letter submitted by the O or P petitioner.

P nonimmigrant visas are available for individuals coming to the U.S. temporarily to:

- Perform at a specific athletic competition as an athlete, individually or as part of a group or team, at an internationally recognized level of performance (P-1A). P athletes include:

- Internationally recognized athletes
- Certain professional athletes, certain amateur athletes or coaches, and professional or amateur athletes performing in a theatrical ice skating production under the COMPETE Act

- Perform as a member of an entertainment group that has been recognized internationally as outstanding in its discipline for a sustained and substantial period of time (P-1B);
- Perform as an artist or entertainer, individually or as part of a group, who will perform under a reciprocal exchange program between an organization in the U.S. and an organization in another country (P-2); or
- Perform, teach, or coach as artists or entertainers, individually or as part of a group, under a program that is culturally unique (P-3).

USCIS said labor unions should send copies of negative P nonimmigrant consultation letters to UnionConsultationMailbox@uscis.dhs.gov. Unions should only send copies of negative consultation letters for O and P petitions to that emailbox. To ensure USCIS matches the consultation letters to the appropriate petitions, labor unions should include each beneficiary's name and the last five digits of the beneficiary's passport number on the consultation letters.

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

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Applicants Can Now Request Certificates of U.S. Citizenship Online

U.S. Citizenship and Immigration Services (USCIS) announced that applicants can now complete and file online Forms N-600, Application for Certificate of Citizenship, and N-600K, Application for Citizenship and Issuance of Certificate Under Section 322.

Applicants can file Form N-600 to obtain a Certificate of Citizenship for themselves or their minor children if they:

- Were born abroad and are claiming U.S. citizenship at birth through their parents; or
- Automatically became a U.S. citizen after birth, but before they turned 18 years old.

Applicants can file Form N-600K if they regularly reside in a foreign country and want to claim U.S. citizenship based on their parents. Applicants must secure lawful admission to the U.S. to complete Form N-600K processing. Children of U.S. service members have separate requirements for naturalization under INA Section 322.

Other forms available for online filing include:

- Form I-90, Application to Replace Permanent Resident Card;
- Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings;
- Form N-400, Application for Naturalization; and
- Form N-565, Application for Replacement Naturalization/Citizenship Document.

Additional information is available at https://www.uscis.gov/news/news-releases/uscis-makes-two-more-applications-available-online-filing.

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ICE Indicts Eight People for U.S. Student Visa System Violations in Undercover Operation

U.S. Immigration and Customs Enforcement (ICE) recently announced three

indictments charging eight individuals with conspiracy to commit visa fraud and harboring aliens for profit, following an undercover investigation by ICE's Homeland Security Investigations (HSI). Six of the defendants were arrested in the metropolitan Detroit area. Two others were arrested in Lake Mary, Florida; and Culpeper, Virginia.

According to the indictments, from approximately February 2017 through January 2019, the defendants, a group of foreign citizens, conspired with each other and others to facilitate hundreds of foreign nationals in illegally remaining and working in the United States by actively recruiting them to enroll in a metro Detroit private university that, unbeknownst to the conspirators, was operated by HSI special agents as part of an undercover operation. As part of the scheme, ICE said, the defendants/recruiters assisted foreign citizen "students" in fraudulently obtaining immigration documents from the school and facilitated the creation of false student records, including transcripts, to deceive immigration authorities. The documents obtained as a result of the conspirators' actions were based on false claims, false statements and fraud, ICE said, since the purported foreign students had no intention of attending school, did not attend a single class, and were not bona fide students. All participants in the scheme knew that the school had no instructors or actual classes, the agency said. "The defendants intended to help shield and hide their customers/'students' from United States immigration authorities for money and collectively profited in excess of a quarter of a million dollars as a result of their scheme," ICE noted. If convicted, the defendants face a statutory maximum penalty of five years in federal prison.

The ICE announcement is at https://www.ice.gov/news/releases/8-individuals-indicted-exploiting-us-student-visa-system.

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