



## MID-MARCH 2019 IMMIGRATION UPDATE

*Posted on March 22, 2019 by Cyrus Mehta*

### Headlines:

#### **Trump Administration Plans to Close USCIS International Operations –**

USCIS Director L. Francis Cissna told senior staff that the agency's International Operations Division, which operates in more than 20 countries, will be closed down. The duties of those offices will be transferred to U.S. embassies and consulates and to domestic U.S. offices.

**USCIS Resumes Premium Processing for All H-1B Petitions** – USCIS has resumed premium processing for all H-1B petitions as of March 12, 2019. All H-1B petitions may be upgraded to premium processing or filed originally with a request for premium processing.

**USCIS Releases Notes on H-1B Filing Tips and RFEs** – USCIS discussed five common reasons for RFEs on H-1B petitions, among other things, at a March teleconference.

**Europe to Require Authorization of U.S. Travelers, Not Visas, for Short-Term Travel** – Recent news reports erroneously stated that starting in 2021, visas would be required of U.S. travelers entering Europe. In fact, pre-travel automated screening and authorization, but not visas, will be required to check for "security and migration risks" for those benefiting from visa-free access to Schengen area countries, according to the European Commission.

**SSA Announces New Travel and Border Crossing Records System** – The Social Security Administration has announced a new "Travel and Border Crossing Records" system. The new system will collect information about applicants, beneficiaries, and recipients under Titles II, XVI, and XVIII who have had absences from the United States.

**TPS Designation Extended for South Sudan** – The 18-month extension

permits current beneficiaries under South Sudan's TPS designation to re-register for TPS and remain in the United States with work authorization through November 2, 2020.

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### **Trump Administration Plans to Close USCIS International Operations**

According to reports, the Trump administration plans to close international U.S. Citizenship and Immigration Services (USCIS) offices by the end of 2019. USCIS Director L. Francis Cissna told senior staff that the agency's International Operations Division, which operates in more than 20 countries, will be closed down. The duties of those offices will be transferred to U.S. embassies and consulates and to domestic U.S. offices and the Department of State (DOS), if DOS agrees. USCIS personnel staffing those offices will return to the United States.

DOS said if it reaches such an interagency agreement, "we anticipate a smooth transition and continued efficient processing of USCIS-related work at all of our missions overseas." DOS has more than 200 posts worldwide.

Director Cissna said in an email to staff that the closures will "better leverage our funds to address backlogs in the United States while also leveraging existing resources at post." He noted that change "can be difficult and can cause consternation. I want to assure you we will work to make this as smooth a transition as possible for each of our USCIS staff while also ensuring that those utilizing our services may continue to do so and our agency operations continue undisrupted.

In addition to helping people apply for immigration benefits, these offices provide assistance in such tasks as helping U.S. citizens and lawful permanent residents, including military personnel abroad, bring family members to the United States or help them apply for U.S. citizenship; international adoptions; refugee resettlement; and immigration fraud investigations.

According to the International Operations (IO) Division's website, the division's work includes reuniting families, enabling adoptive children to come to join permanent families in the United States, considering parole requests from

individuals outside the United States for urgent humanitarian reasons or significant public benefit, and providing information services and travel documents to people around the world, including those with unique needs and circumstances. "Operating in a dynamic global environment with constantly changing political, cultural, environmental, and socio-economic contexts, IO has approximately 240 employees located in the U.S. and in three international districts composed of 24 field offices in 21 countries. Our employees are highly diverse and include foreign nationals in addition to U.S. citizens; foreign nationals make up more than half of the IO staff working abroad and approximately one-third of all IO employees."

Immigration advocates expressed concerns about further discouraging immigrants and disengaging the United States from the rest of the world. Barbara Strack, former chief of USCIS' Refugee Affairs Division, said the closures would "throw into chaos around the world." She warned that the move would "smack all government employees abroad, including folks in the military, who have a foreign spouse or kids they are trying to bring to the U.S. legally."

More information about IO is at

<https://www.uscis.gov/about-us/directorates-and-program-offices/refugee-asylum-and-international-operations-directorate/international-operations/international-operations>.

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### **USCIS Resumes Premium Processing for All H-1B Petitions**

U.S. Citizenship and Immigration Services (USCIS) has resumed premium processing for all H-1B petitions as of March 12, 2019. USCIS announced that all H-1B petitions may be upgraded to premium processing or filed originally with a request for premium processing.

In January 2019, premium processing was restored for FY 2019 cap-subject petitions that were filed in April 2018 and remained pending. In February, USCIS resumed premium processing for non-cap H-1B petitions filed before December 21, 2018. Now USCIS has restored premium processing for all H-1B petitions.

To request an upgrade to premium processing for pending petitions that have received a Request for Evidence (RFE), petitioners should include their request

for premium processing, along with the required fee, when submitting the response to the RFE. The USCIS filing fee for premium processing is \$1,410, which guarantees action on the petition within 15 calendar days of USCIS's receiving the request. If USCIS does not take adjudicative action within the 15-day window, the agency refunds the petitioner's premium processing fee and continues with expedited processing of the petition.

Those who received a transfer notice for a pending H-1B petition and are requesting premium processing service must submit the premium processing request to the service center now handling the petition. They should also include a copy of the transfer notice with the premium processing request to avoid possible delays. If the petition was transferred and the petitioner sends the premium processing request to the wrong center, USCIS will forward it to the petition's current location. However, the premium processing "clock" will not start until the premium processing request has been received at the correct center.

The USCIS notice, which includes additional details about where to send premium processing requests in the event of a transfer, is at <https://www.uscis.gov/news/alerts/uscis-resumes-premium-processing-all-h-1b-petitions>.

Regarding H-1B cap cases filed under FY 2020, on March 19, 2019 USCIS announced that premium processing will be offered in a two-phased approach during the FY 2020 cap season so USCIS can best manage the premium processing requests without fully suspending it as in previous years. The first phase will include FY 2020 cap-subject H-1B petitions requesting a change of status and the second phase will include all other FY 2020 cap-subject petitions.

Starting April 1, FY 2020 cap-subject H-1B petitioners requesting a change of status on their [Form I-129, Petition for a Nonimmigrant Worker](#), may request premium processing by **concurrently** filing [Form I-907, Request for Premium Processing Service](#). However, to prioritize data entry for cap-subject H-1B petitions, USCIS will not begin premium processing for these petitions immediately. USCIS will begin premium processing for these petitions no later than May 20, 2019, and will notify the public before premium processing begins for these petitions. If a petitioner does not file Form I-907 concurrently with an FY 2020 H-1B cap-subject petition requesting a change of status, the petitioner must wait until premium processing begins to submit Form I-907. Until

premium processing begins for these petitions, USCIS will reject any Form I-907 that is not filed concurrently with a cap-subject Form I-129. Petitioners must appropriately select response "b" for Item 4 in Part 2 of Form I-129 to be eligible to concurrently file Form I-907.

Premium processing for all other FY 2020 cap-subject H-1B petitions will not begin until at least June 2019. Cap-subject petitioners not requesting a change of status may not submit their premium processing request concurrently with their H-1B petition. These petitioners will be eligible to upgrade to premium processing by filing Form I-907 once premium processing begins for this group. USCIS will notify the public with a confirmed date for premium processing for cap-subject petitioners not requesting a change of status. Further information on premium processing for cap subject cases is at

<https://www.uscis.gov/news/news-releases/uscis-announces-fy-2020-h-1b-cap-season-start-updates-and-changes>

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### **USCIS Releases Notes on H-1B Filing Tips and RFEs**

U.S. Citizenship and Immigration Services (USCIS) has released the official minutes from its teleconference on "H-1B Filing Tips and Requests for Evidence (RFEs)," held March 7, 2019.

Among other things, USCIS discussed five common reasons for RFEs on H-1B petitions:

1. Evidence demonstrating that the offered position qualifies as a specialty occupation;
2. Whether the labor condition application properly corresponds to the proffered position in the petition;
3. Evidence of the employer-employee relationship and qualifying work;
4. Evidence of the beneficiary's qualifications; and
5. Itineraries.

The minutes are at

[https://www.uscis.gov/sites/default/files/files/nativedocuments/H-1B\\_Filing\\_Tips\\_and\\_Understanding\\_Requests\\_for\\_Evidence\\_RFEs.pdf](https://www.uscis.gov/sites/default/files/files/nativedocuments/H-1B_Filing_Tips_and_Understanding_Requests_for_Evidence_RFEs.pdf).

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## **Europe to Require Authorization of U.S. Travelers, Not Visas, for Short-Term Travel**

Recent news reports erroneously stated that starting in 2021, U.S. citizens traveling to Europe will need visas. In fact, pre-travel automated screening and authorization, but not visas, will be required to check for "security and migration risks" for those benefiting from visa-free access to Schengen area countries, according to the European Commission (EC). The "European Travel Information and Authorisation System" (ETIAS) will cross-check visa-exempt travelers, including those from the United States, against European information systems for borders, security, and migration. The automated check is expected to take "minutes" in most cases. The application fee is expected to be about \$8.

An EC fact sheet states that an ETIAS travel authorization does not reintroduce visa-like obligations. There is no need to go to a consulate to make an application, no biometric data are collected, and significantly less information is gathered than during a visa application procedure. As a general rule, a Schengen visa procedure can take up to 15 days, and can in some cases be extended up to 30 or 60 days, but the online ETIAS application "only takes a few minutes to fill in. The validity will be for a period of three years, significantly longer than the validity of a Schengen visa. An ETIAS authorisation will be valid for an unlimited number of entries," the EC states. U.S. travelers staying in Europe for more than 90 days must have a visa.

The Schengen area includes 26 of the 28 European Union (EU) countries, and a few non-EU countries. A list of countries in the Schengen area is at [https://europa.eu/european-union/about-eu/countries\\_en?country=BE#members-of-the-schengen-border-free-area](https://europa.eu/european-union/about-eu/countries_en?country=BE#members-of-the-schengen-border-free-area). The European Commission's statement is at [http://europa.eu/rapid/press-release\\_STATEMENT-18-3527\\_en.htm](http://europa.eu/rapid/press-release_STATEMENT-18-3527_en.htm).

Additional details are at

[http://europa.eu/rapid/press-release\\_MEMO-18-4362\\_en.htm](http://europa.eu/rapid/press-release_MEMO-18-4362_en.htm).

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## **SSA Announces New Travel and Border Crossing Records System**

The Social Security Administration (SSA) has announced a new "Travel and Border Crossing Records" system. The new system will collect information about applicants, beneficiaries, and recipients under Titles II, XVI, and XVIII who have had absences from the United States.

The SSA noted that currently, the agency relies on individuals to self-report their foreign travel. Often, the SSA said, it does not receive these reports or receives them untimely, which results in improper payments. For example, the SSA noted, in general, it suspends Title II benefits to aliens who remain outside of the United States for more than six consecutive calendar months. It generally suspends Title II benefits to both U.S. citizens and non-U.S. citizens who travel to a country where payment is restricted by the United States. Additionally, the SSA suspends Title XVI payments to both citizen and noncitizen recipients who are outside of the United States for a full calendar month or 30 consecutive days or longer. With regard to Title XVIII, the SSA plans to collect this information to make decisions on Medicare entitlement claims and to make determinations on physical presence in the United States.

The SSA notice is at

<https://www.govinfo.gov/content/pkg/FR-2019-03-13/pdf/2019-04583.pdf>.

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### **TPS Designation Extended for South Sudan**

Secretary of Homeland Security Kirstjen M. Nielsen announced on March 8, 2019, the extension of the temporary protected status (TPS) designation for South Sudan for an additional 18 months due to the ongoing armed conflict and "extraordinary and temporary conditions" that support the extension.

There are 84 South Sudan TPS beneficiaries, according to Secretary Nielsen. This 18-month extension of South Sudan's designation for TPS permits current beneficiaries under South Sudan's TPS designation to re-register for TPS and remain in the United States with work authorization through November 2, 2020. (The last day of the most recent previous extension is May 2, 2019.) To be eligible for TPS under South Sudan's current designation, along with meeting the other eligibility requirements, individuals must have continuously resided in the United States since January 25, 2016, and have been continuously physically present in the United States since May 3, 2016.

Secretary Nielsen's statement is at

<https://www.dhs.gov/news/2019/03/08/secretary-homeland-security-kirstjen-m-nielsen-announcement-temporary-protected>. Additional details and official re-

registration information will be posted at

<https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-pr>

[otected-status-designated-country-south-sudan.](#)

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### Firm in the News

**Mr. Mehta** spoke on a panel entitled “Ethical Representation and Strategic Client Management in Turbulent Times” at the 2019 Upper Midwest Immigration Law Conference, in Minneapolis, MN, on March 15, 2019.

**Mr. Mehta** spoke on a panel “Ethics in Immigration Law Cases” at the Immigration and Asylum Law Conference 2019, New York Law School, in New York, NY, on March 8, 2019.

**David Isaacson** spoke on a panel “Immigration Special Topic: Cancellation of Removal and Related Relief” at the Asylum, Special Immigrant Juvenile Status, Crime Victim, and Other Immigration Relief 2019, Practising Law Institute, in New York, NY and via Webcast, on February 8, 2019.

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