



APRIL 2019 IMMIGRATION UPDATE

Posted on April 1, 2019 by Cyrus Mehta

Headlines:

USCIS Announces FY 2020 H-1B Cap Season Start, Updates, and Changes –

USCIS announced the start of the FY 2020 H-1B cap season, start dates for premium processing of cap-subject H-1B petitions, and the launch of its new H-1B data hub, while reminding petitioners of its new H-1B cap selection process.

DOL Issues Bulletin on Compliance With H-1B Posting Requirements When Using Electronic Means –

A new Field Assistance Bulletin reiterates an H-1B petitioner's obligations when using electronic means to make the required notice to all affected employees.

April Visa Bulletin Notes Movement in Many Employment-Based

Categories – The Department of State's Visa Bulletin for April 2019 notes that Final Action Date movement in many employment-based preference categories continues to be greater than might ordinarily be expected. This is anticipated to continue for at least the next few months.

USCIS Updates Filing Addresses for Nonimmigrant Worker Petitions –

USCIS has updated the addresses for filing Form I-129, Petition for a Nonimmigrant Worker.

DOL Updates H-2A, H-2B Allowable Charges and Reimbursements –

DOL announced an annual update to: (1) the allowable charges that employers seeking H-2A workers in occupations other than herding or production of livestock on the range may charge their workers when the employer provides three meals per day; and (2) the maximum travel subsistence meal reimbursement that a worker with receipts may claim under the H-2A and H-2B programs.

Self Check Now Requires myE-Verify Account – Self Check, a feature that allows employees to verify their employment eligibility, now requires a myE-Verify account.

Trump Administration Announces Extension of Liberian DED 'Wind-Down' Period, EADs – President Trump has extended the wind-down period for Deferred Enforced Departure (DED) for certain eligible Liberians for an additional 12 months, through March 30, 2020.

Five Arrested in Chinese Student Visa Scheme – Federal authorities arrested five people linked to a scheme that allegedly helped Chinese nationals obtain student visas by hiring individuals who used fake Chinese passports to take English proficiency tests for the foreign students.

Trump Administration Announces 'Trexit' – The Trump administration announced on April 1, 2019, that it has decided to remove the United States from the rest of the world, period.

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USCIS Announces FY 2020 H-1B Cap Season Start, Updates, and Changes

On March 19, 2019, U.S. Citizenship and Immigration Services (USCIS) announced the start of the fiscal year (FY) 2020 H-1B cap season, start dates for premium processing of cap-subject H-1B petitions, and the launch of its new H-1B data hub, while reminding petitioners of its new H-1B cap selection process. Below are highlights of the changes.

Start of FY 2020 cap season. USCIS will begin accepting H-1B petitions subject to the FY 2020 cap on April 1, 2019, and will reject any FY 2020 cap-subject H-1B petitions filed before April 1. [Form M-735, Optional Checklist for Form I-129 H-1B Filings \(PDF, 262 KB\)](#), provides detailed information on how to complete and submit a FY 2020 H-1B petition.

Premium processing for FY 2020 cap-subject petitions. Premium processing will be offered in a two-phased approach during the FY 2020 cap season "so USCIS can best manage premium processing requests without fully suspending it as in previous years," the agency said. The first phase will include FY 2020 cap-subject H-1B petitions requesting a change of status. 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 said it will begin premium processing for these petitions by 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 a 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, USCIS said.

Premium processing for all other FY 2020 cap-subject H-1B petitions will not start until at least June 2019, the agency noted. Cap-subject petitioners not requesting a change of status may not submit their premium processing requests concurrently with their H-1B petitions. These petitioners will be eligible to upgrade to premium processing by filing Form I-907 once premium processing begins for this group. USCIS said it will notify the public with a confirmed date for premium processing for cap-subject petitioners not requesting a change of status.

At this time, premium processing for H-1B petitions that are exempt from the cap, such as extension of stay requests, remains available, USCIS said.

Note: Reaction to the guidance has been mixed. Some say they are not filing for premium processing before lottery selection. Given the costs of applying for premium processing (\$1,410 as of this writing), their suggestion is that cases only be premium processed once they have been selected in the lottery. By this reasoning, even if you are filing a change of status H-1B petition, filing for premium processing concurrently with a petition that might not even be selected for adjudication risks rejection not only of the premium processing request but of the entire petition (and loss of the cap number) if there are any problems with the premium processing check. On the other hand, some would like to file for premium processing before lottery selection. Their human resources representatives feel that it's easier to try premium processing rather than go back to the hiring managers later to seek additional funds.

New H-1B data hub. USCIS also announced a new "H-1B Employer Data Hub" that will be available on uscis.gov on April 1, 2019. The data hub is part of USCIS's "continued effort to increase the transparency of the H-1B program by allowing the public to search for H-1B petitioners by fiscal year, North American Industry Classification System (NAICS) industry code, company name, city, state, or zip code. This will give the public the ability to calculate approval and denial rates and to review which employers are using the H-1B program," USCIS said.

New H-1B cap selection process. In January, the Department of Homeland Security announced a final rule amending regulations governing cap-subject H-1B petitions, including those that may be eligible for the advanced degree exemption. The final rule reverses the order by which USCIS selects H-1B petitions under the H-1B regular cap and the advanced degree exemption, which will be in effect for the FY 2020 cap season. This change "increases the chances that more of these visas will be granted to those with an advanced degree from a U.S. institution of higher education," USCIS said.

More details are available at

<https://www.uscis.gov/news/news-releases/uscis-announces-fy-2020-h-1b-cap-season-start-updates-and-changes>. NAICS information and codes are available at <https://www.naics.com/search/>.

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DOL Issues Bulletin on Compliance With H-1B Posting Requirements When Using Electronic Means

The Department of Labor's Wage & Hour Division (WHD) said it has seen a rise in the use of electronic notifications as workplaces increasingly provide their employees with documents by electronic means. Among other things, WHD noted, an H-1B petitioner must notify affected U.S. workers of its intent to hire H-1B nonimmigrant workers. This notification requirement, commonly referred to as the notice or posting requirement, informs U.S. workers of the terms of employment of nonimmigrant workers, the right of U.S. workers to examine certain documents, and the ability of U.S. workers to file complaints if they believe that violations have occurred.

A new Field Assistance Bulletin (FAB) reiterates an H-1B petitioner's obligations when using electronic means to make the required notice to all affected employees. This includes those who are employed by a third-party employer.

The bulletin is at https://www.dol.gov/whd/FieldBulletins/fab2019_3.htm.

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April Visa Bulletin Notes Movement in Many Employment-Based Categories

The Department of State's Visa Bulletin for April 2019 notes that Final Action Date movement in many employment-based preference categories continues to be greater than might ordinarily be expected. This is anticipated to continue for at least the next few months.

The Department explained that this movement is a direct result of fewer applicants proceeding to final action on their cases at consular posts abroad and at U.S. Citizenship and Immigration Services offices. Once large numbers of applicants begin to have their cases brought to final action, final action date movements will necessarily slow or stop, the bulletin says. Moreover, in some categories, final action date retrogression is a possibility if demand levels are excessive. Therefore, the recent rates of final action date advances will not continue indefinitely, but the bulletin notes that "it is not possible to say at present when they will end."

The April 2019 Visa Bulletin is at <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2019/visa-bulletin-for-april-2019.html>.

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USCIS Updates Filing Addresses for Nonimmigrant Worker Petitions

U.S. Citizenship and Immigration Services has updated the addresses for filing Form I-129, Petition for a Nonimmigrant Worker.

The new addresses are at <https://www.uscis.gov/i-129-addresses>. Practitioners advise checking addresses shortly before filing because they can change without notice.

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DOL Updates H-2A, H-2B Allowable Charges and Reimbursements

The Department of Labor (DOL) recently announced an annual update to: (1) the allowable charges that employers seeking H-2A workers in occupations other than herding or production of livestock on the range may charge their

workers when the employer provides three meals per day; and (2) the maximum travel subsistence meal reimbursement that a worker with receipts may claim under the H-2A and H-2B programs. The notice also reminds employers of their obligations concerning overnight lodging costs as part of required subsistence.

The notice was published in the March 22, 2019, Federal Register at <https://www.govinfo.gov/content/pkg/FR-2019-03-22/pdf/2019-05442.pdf>.

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Self Check Now Requires myE-Verify Account

Self Check, a feature that allows employees to verify their employment eligibility, now requires a myE-Verify account, U.S. Citizenship and Immigration Services (USCIS) announced. Employees will be prompted to create or log in to myE-Verify accounts, where they can perform multiple Self Check queries and lock their Social Security numbers to prevent others from using them in E-Verify. "The streamlined account creation process continues to protect employee information while eliminating the need for repeated identity-proofing," USCIS said.

Those with questions should contact myE-Verify Customer Support at myeverify@uscis.gov, the agency said. For more on E-Verify, see <https://www.e-verify.gov/mye-verify>.

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Trump Administration Announces Extension of Liberian DED 'Wind-Down' Period, EADs

On March 28, 2019, President Trump issued a memorandum extending the wind-down period for Deferred Enforced Departure (DED) for certain eligible Liberians for an additional 12 months, through March 30, 2020. During this time, such individuals may remain in the United States. President Trump also directed the Department of Homeland Security to provide for continued work authorization for Liberian DED beneficiaries.

The Trump administration also announced that U.S. Citizenship and Immigration Services (USCIS) will publish a notice in the Federal Register with information on the six-month automatic extension, through September 27,

2019, of employment authorization documents (EADs) currently held by eligible Liberians under DED and instructions on how they can obtain EADs for the remainder of the DED wind-down period.

For more information, see

<https://www.uscis.gov/humanitarian/deferred-enforced-departure/ded-granted-country-liberia/ded-granted-country-liberia>.

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Five Arrested in Chinese Student Visa Scheme

Federal authorities arrested five people linked to a scheme that allegedly helped Chinese nationals obtain student visas by hiring individuals who used fake Chinese passports to take English proficiency tests for the foreign students.

The arrests were made pursuant to a 26-count indictment returned by a federal grand jury. The indictment charges the defendants with conspiring to use false passports, using false passports, and aggravated identity theft as part of the scheme to impersonate Chinese nationals who were required to take the Test of English as a Foreign Language (TOEFL) to obtain a student visa.

A sixth defendant in the case is believed to be currently residing in Taiwan.

When a foreign national goes to a TOEFL testing location, the test-taker must present an original, non-expired, government-issued identification document recognized by their home country. According to the indictment, all six defendants used counterfeit People's Republic of China passports to impersonate 19 different Chinese nationals at various TOEFL testing locations in and around Los Angeles, California.

The indictment further alleges that one defendant paid for and registered 14 Chinese nationals for TOEFL exams over a one-year period in 2015 and 2016. Following the tests, the defendant allegedly paid three co-defendants approximately \$400 per test.

The conspiracy count in the indictment carries a maximum penalty of five years in federal prison. The charge of using a false passport carries a maximum sentence of 10 years. Aggravated identity theft carries a mandatory consecutive two-year sentence.

This case was investigated by U.S. Immigration and Customs Enforcement's Homeland Security Investigations, the State Department's Diplomatic Security Service, and U.S. Citizenship and Immigration Service's Fraud Detection National Security Section. The Educational Testing Service, which administers the TOEFL exam, provided assistance during the investigation.

More details are available at

<https://www.uscis.gov/news/news-releases/5-arrested-scheme-hired-people-take-english-proficiency-exam-behalf-chinese-nationals-seeking-student-visas>.

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Trump Administration Announces 'Trexit'

The Trump administration announced on April 1, 2019, that it has decided to remove the United States from the rest of the world, period. A Presidential tweet noted that "we've been canceling our disgraceful, weak, Loser Treaties one by one—a bad way to do Business, folks! Sad! We've been played for chumps!! We're now making a great deal by canceling all of them, all at once, and dumping all of our allies. We're doing a Beautiful Removal, the best Removal you've ever seen. Your head will spin. We're now friends with the best people—Vlad Putin (I call him Vlad), Kim Jong Un, Muhammad bin Salman. We've got plenty of people and businesses right here. Allies, schmallies! No need to answer to anyone else, folks! We don't need 'em! MAGA!!" It was unclear as of press time whether the "total, bigly removal" was limited to treaties or included other things like a geographical relocation. When asked about this, Mr. Trump would only say, "Well, if you dropped the United States right on top of Russia, it'd probably fit inside those squiggly lines except for a few little pieces, which could be snipped off."

The next day, he added one more tweet: "Happy April Fool's Day!"

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