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US IMMIGRATION & NATIONALITY LAW

IMMIGRATION UPDATE - APRIL 24, 2019

Posted on May 8, 2019 by Cyrus Mehta

Headlines:

Visa Bulletin Shows Slight Forward Progress in Some Backlogged Preference Categories – Regarding EB-1 for China and India, the bulletin notes a continued "extremely high rate of demand" that may require temporary retrogression until October.

New USCIS Policy Guidance Clarifies Marijuana-Related Activities Bar on Naturalization – Certain marijuana-related activities generally bar naturalization even if they are decriminalized under applicable state laws.

State Dept. to Issue Final Rule on "Discontinuing" Granting Visas When Country is Sanctioned – The Department will publish a final rule, effective April 22, 2019, modifying current regulations to reflect that consular offices are to discontinue granting visas to individuals from certain sanctioned countries.

Acting Secretary of Homeland Security Announces New Office for Targeted Violence and Terrorism Prevention, New CBP Commissioner – Kevin McAleenan has replaced Kirstjen Nielsen, who was forced to resign recently.

Attorney General's Decision Opens Door to Indefinite Detention of Asylum Seekers – A person who is transferred from expedited removal proceedings to full removal proceedings after establishing a credible fear of persecution or torture is ineligible for release on bond.

Details:

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Visa Bulletin Shows Slight Forward Progress in Some Backlogged Preference Categories

The Department of State's Visa Bulletin for May 2019 shows slight forward progress for EB-1 for all chargeability areas except China and India, EB-2 for China and India, EB-3 and Other Workers China, India, and the Philippines, and EB-5 China and Vietnam. The remainder of the priority dates remain current with per-country quotas not reached.

Regarding EB-1 for China and India, the bulletin notes a continued "extremely high rate of demand" that may require temporary retrogression until October.

U.S. Citizenship and Immigration Services (USCIS) has announced that the agency will follow the "Final Action Dates" chart for the month for accepting I-485 Adjustment of Status applications.

Details: Visa Bulletin for May 2019, https://bit.ly/2Ur6jNq; USCIS announcement, https://bit.ly/2KQhq2F

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New USCIS Policy Guidance Clarifies Marijuana-Related Activities Bar on Naturalization

U.S. Citizenship and Immigration Services (USCIS) recently issued policy guidance to clarify that certain marijuana-related activities generally bar naturalization even if they are decriminalized under applicable state laws. Such an applicant may be deemed to lack good moral character if found to have violated federal law, the guidance states.

Federal law classifies marijuana as a "Schedule I" controlled substance whose manufacture (which includes production, such as planting, cultivation, growing, or harvesting), distribution, dispensing, or possession may lead to immigration consequences. Some practitioners are advising clients not to work for or invest in marijuana-related companies. Reportedly, U.S. Customs and Border Protection is also checking social media accounts.

Details: Announcement, https://www.uscis.gov/news/alerts/uscis-issues-policy-guidance-clarifying-how-federal-controlled-substances-law-applies-naturalization-determinations; policy manual update, https://www.uscis.gov/sites/default/files/policymanual/updates/20190419-Cont

rolledSubstanceViolations.pdf; video warning immigrants co-produced by Servicios De La Raza and the Marijuana Industry Group, https://www.youtube.com/watch?v=UsAdoENvw2E&feature=youtu.be

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State Dept. to Issue Final Rule on "Discontinuing" Granting Visas When Country is Sanctioned

The Department of State will publish a final rule, effective April 22, 2019, modifying current regulations to reflect that consular officers are to discontinue granting visas to individuals from certain sanctioned countries.

Under the current regulation, consular officers either grant or deny every visa application. The final rule creates a third and different action, requiring consular officers to discontinue granting visas when a country has been sanctioned for "denying or delaying accepting one or more of its nationals subject to a final order of removal from the United States."

Details: Final rule, https://www.federalregister.gov/documents/2019/04/22/2019-08061/refusal-procedures-for-visas

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Acting Secretary of Homeland Security Announces New Office for Targeted Violence and Terrorism Prevention, New CBP Commissioner

Kevin McAleenan, formerly head of U.S. Customs and Border Protection (CBP) and the new Acting Homeland Security Secretary, has replaced Kirstjen Nielsen, who was forced to resign recently amid President Trump's declarations that he wanted a "tougher direction" for immigration. One of his first acts was announcing the establishment of a new Office for Targeted Violence and Terrorism Prevention within the Department of Homeland Security (DHS) on April 19, 2019. Acting Secretary McAleenan also designated John P. Sanders, CBP Chief Operating Officer, as the senior official performing the functions and duties of the CBP Commissioner.

Details: Statement from Secretary McAleenan, https://www.dhs.gov/news/2019/04/10/message-acting-secretary-kevin-k-mcaleenan; announcement of new office,

https://www.dhs.gov/news/2019/04/19/acting-secretary-mcaleenan-announces-establishment-dhs-office-targeted-violence-and; announcement of Mr. Sanders as head of CBP, https://www.dhs.gov/news/2019/04/15/acting-secretary-mcaleenan-statement-designation-cbp-chief-operating-officer-john; notes on Secretary McAleenan's recent trip to the U.S.-Mexico border, https://www.dhs.gov/news/2019/04/19/readout-acting-secretary-mcaleenan-s-trip-mcallen; McAleenan bio, https://www.cbp.gov/about/leadership-organization/commissioner

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Attorney General's Decision Opens Door to Indefinite Detention of Asylum Seekers

A new decision by Attorney General William Barr holds that a person who is transferred from expedited removal proceedings to full removal proceedings after establishing a credible fear of persecution or torture is ineligible for release on bond. Such a person "must be detained until his removal proceedings conclude, unless he is granted parole," the decision states.

Details: *Matter of M-S-*, https://www.justice.gov/eoir/file/1154747/download

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