



IMMIGRATION UPDATE - MAY 12, 2019

Posted on May 20, 2019 by Cyrus Mehta

Headlines:

USCIS Clarifies Period of Authorized Stay for P-1S Essential Support Personnel of Individual Athletes – USCIS emphasizes that the periods of initial authorized stay are different for individual athletes (P-1A visa) and their essential support personnel (P-1S visa).

DHS Increases H-2B Cap for FY 2019 by 30,000 Additional Visas – The purpose of the rule is to aid U.S. businesses that are likely to suffer irreparable harm (permanent and severe financial loss) without the ability to employ all of the H-2B workers requested on their petitions before the end of FY 2019.

DHS Continues Documentation Validity for Beneficiaries of Nepal, Honduras TPS – DHS will not implement or enforce the decision to terminate temporary protected status for Honduras or Nepal pending resolution of an appeal, and will extend associated EADs.

USCIS Names Mark Koumans as New Deputy Director – Mr. Koumans, a career federal employee, has served since September 2015 in a number of executive positions at CBP.

President Trump Nominates Mark Morgan To Lead ICE – Mr. Morgan previously was chief of the U.S. Border Patrol in the last months of the Obama administration and a former agent of the Federal Bureau of Investigation.

OFLC Approves CW-1 Program Survey From CNMI Governor – OFLC approved the governor's survey and started issuing CW-1 prevailing wage determinations using the survey wages for occupations covered by the governor's survey.

Details:

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USCIS Clarifies Period of Authorized Stay for P-1S Essential Support Personnel of Individual Athletes

U.S. Citizenship and Immigration Services (USCIS) has updated its *Adjudicators Field Manual* to emphasize that, under current regulations, the periods of initial authorized stay are different for individual athletes (P-1A visa) and their essential support personnel (P-1S visa).

The P-1S classification is for "Essential Support Personnel" who are an integral part of the performance of a P-1 individual athlete, and who perform support services that cannot be readily performed by a U.S. worker.

- Under existing DHS regulations, P-1A individual athletes have an *initial* period of authorized stay of up to 5 years, while their P-1S essential support personnel have an *initial* authorized stay limited to the period of time necessary to complete the sporting event, but not to exceed 1 year.
- USCIS also may authorize visa extension petitions for P-1S essential support personnel for a period necessary to complete the event, not to exceed 5 years, for a total period of stay not to exceed 10 years.

Details: USCIS announcement,

<https://www.uscis.gov/news/alerts/uscis-clarifies-period-authorized-stay-p-1s-essential-support-personnel-individual-athletes>; USCIS policy alert,

<https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2019/20190509-P1SValidity.pdf>; P-1A Internationally Recognized Athlete page,

<https://www.uscis.gov/working-united-states/temporary-workers/p-1a-internationally-recognized-athlete>

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DHS Increases H-2B Cap for FY 2019 by 30,000 Additional Visas

A temporary rule jointly issued by the Departments of Homeland Security (DHS) and Labor (DOL), effective May 8, 2019, increases the H-2B cap for fiscal year (FY) 2019 by 30,000. The H-2B visa permits a foreign worker to fill temporary nonagricultural jobs in the United States. The purpose of the rule is to aid U.S. businesses that are likely to suffer irreparable harm (permanent and severe financial loss) without the ability to employ all of the H-2B workers requested

on their petitions before the end of FY 2019.

Among other terms and conditions, the temporary rule requires:

- For this one-time increase, any H-2B workers falling under this cap increase are limited to returning workers who were "issued an H-2B visa or otherwise granted H-2B status in FY 2016, 2017, or 2018."
- If an employer submits a request to DHS for an H-2B visa more than 45 days after the start date of work listed on the temporary labor certification, the employer would be required to conduct a "fresh round of recruitment" for U.S. workers.

Details: DHS/DOL rule,

<https://www.federalregister.gov/documents/2019/05/08/2019-09500/exercise-of-time-limited-authority-to-increase-the-fiscal-year-2019-numerical-limitation-for-the>; USCIS announcement with links to forms, <https://www.uscis.gov/news/news-releases/dhs-dol-publish-joint-rule-additional-visas-returning-foreign-workers>

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DHS Continues Documentation Validity for Beneficiaries of Nepal, Honduras TPS

The Department of Homeland Security (DHS) announced that it will not implement or enforce the decision to terminate temporary protected status (TPS) for Honduras or Nepal pending resolution of an appeal in *Ramos v. Nielsen* or other order of the court, and as required by the order in *Bhattarai v. Nielsen*.

Beneficiaries under these TPS designations will retain their TPS for a temporary period, provided they remain eligible otherwise.

- Beneficiaries under these TPS designations will retain their TPS for a temporary period, provided they remain eligible otherwise.
- DHS further announced that it is automatically extending through March 24, 2020, the validity of related employment authorization documents (EADs) and other related documentation for eligible beneficiaries under the TPS designation for Nepal.
- The TPS designation for Honduras remains in effect through January 5, 2020.

Details: USCIS announcement,

<https://www.uscis.gov/news/news-releases/uscis-names-new-deputy-director;>
Federal Register notice, <https://bit.ly/2Q0Ralh>

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USCIS Names Mark Koumans as New Deputy Director

U.S. Citizenship and Immigration Services (USCIS) announced on May 10, 2019, that Mark Koumans is the agency's new Deputy Director, effective May 13.

Mr. Koumans, a career federal employee, has served since September 2015 in a number of executive positions at U.S. Customs and Border Protection (CBP). He replaces Tracy Renaud, who has served as USCIS Acting Deputy Director since March 2018. Renaud will return to her previous position as the Associate Director of the Management Directorate. Mr. Koumans previously served for eight years as a Deputy Assistant Secretary in the Department of Homeland Security Office of Policy. Before that, he was a member of the U.S. Foreign Service for 17 years.

Details: USCIS announcement,

<https://www.uscis.gov/news/news-releases/uscis-names-new-deputy-director>

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President Trump Nominates Mark Morgan To Lead ICE

In a tweet, President Donald Trump named Mark Morgan to head U.S. Immigration and Customs Enforcement (ICE): "I am pleased to inform all of those that believe in a strong, fair and sound Immigration Policy that Mark Morgan will be joining the Trump Administration as the head of our hard working men and women of ICE. Mark is a true believer and American Patriot. He will do a great job!" Mr. Morgan's appointment must be confirmed by the Senate.

Mr. Morgan previously was chief of the U.S. Border Patrol in the last months of the Obama administration and a former agent of the Federal Bureau of Investigation. He has publicly stated that he backs President Trump's border wall, among other policies.

Details: Trump tweet announcing Mr. Morgan's nomination,

<https://twitter.com/realDonaldTrump/status/1125051346456121346>; news articles on Mr. Morgan's opinions, *Washington Post*,

https://www.washingtonpost.com/politics/2019/01/09/obama-border-patrol-chief-trump-stay-course-border-wall/?utm_term=.5e0eea6c15a4; *Epoch Times*, https://www.theepochtimes.com/former-border-patrol-chief-mark-morgan-border-crisis-worst-in-history_2896172.html

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OFLC Approves CW-1 Program Survey From CNMI Governor

The Department of Labor's Office of Foreign Labor Certification (OFLC) recently received and approved a CW-1 wage survey from the governor of the Commonwealth of the Northern Mariana Islands (CNMI) covering 84 occupations. OFLC approved the governor's survey and started issuing CW-1 prevailing wage determinations on May 9, 2019, using the survey wages for occupations covered by the governor's survey.

Details: OFLC announcement (May 9, 2019), <https://www.foreignlaborcert.doleta.gov/>; CW-1 program page, <https://www.foreignlaborcert.doleta.gov/cw-1.cfm>

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